

1 UNITED STATES BANKRUPTCY COURT
2 SOUTHERN DISTRICT OF NEW YORK

3 Case No. 22-10964-mg

4 - - - - - x

5 In the Matter of:

6

7 CELSIUS NETWORK LLC,
8 Debtor.

9 - - - - - x

10 Adv. Case No. 22-01139-mg

11 - - - - - x

12 CELSIUS NETWORK LIMITED et al.,
13 Plaintiffs,

14 v.

15 STONE et al.,
16 Defendants.

17 - - - - - x

18 Adv. Case No. 22-01140-mg

19 - - - - - x

20 CELSIUS NETWORK LIMITED et al.,
21 Plaintiffs,

22 v.

23 PRIME TRUST, LLC,
24 Defendant.

25 - - - - - x

1 United States Bankruptcy Court
2 One Bowling Green
3 New York, NY 10004
4

5 December 5, 2022
6 9:57 AM
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21 B E F O R E :

22 HON MARTIN GLENN

23 U.S. BANKRUPTCY JUDGE

24

25 ECRO: FRANCES F. & KEVIN SU.

1 HEARING re Hybrid Hearing Using Zoom for Government RE:
2 Debtor's Motion Seeking Entry of an Order (I) Permitting the
3 Sale of Stablecoin in the Ordinary Course and (II) Granting
4 Related Relief. (Doc# 832, 853, 855, 895, 90 I, 922, 925,
5 933, 936, 954, 967, 970, 1043, 1058, 1076, 1085, 1086, 1186,
6 1188, 1228, 1253, 1280, 1324 to 1328, 1345, 1388, 1389, 1396,
7 1400, 1406, 1412, 1414, 1416, 1417, 1418, 1430, 1463, 1464,
8 1474, 1482, 1484- 1486, 1489- 1493, 1495 to 1499, 1502-1504,
9 1506, 1507, 1511, 1515, 1516, 1517, 1519, 1533, 1535, 1537 -
10 1540, 1547, 528) Hearing set for 12/05/2022 at 10:00 am and
11 12/06/2022 at 10:00 am

12
13 HEARING re Hearing Using Zoom for Government RE: First
14 Motion to Extend Exclusivity Period for Filing a Chapter 11
15 Plan and Disclosure Statement. (Doc# 1317, 1433, 1442, 1468,
16 1470, 1471, 1473, 1475, 1476, 1477, 1487, 1479, 1494, 1536,
17 1546)

18
19 HEARING re Hearing Using Zoom for Government RE: Debtors'
20 Amended Motion for Entry of an Order Authorizing the Debtors
21 to Redact and File Under Seal Certain Confidential
22 Information Related to the Debtors Key Employee Retention
23 Plan. (Doc## 1425, 1427 to 1429)

24
25

1 HEARING re Hearing Using Zoom for Government RE: Debtor's
2 Amended Motion for Entry of an Order (I) Approving the
3 Debtors Key Employee Retention Plan and (II) Granting
4 Related Relief. (Doc# 1426, 1429)

5

6 HEARING re Adversary proceeding: 22-01139-mg Celsius Network
7 Limited et al v. Stone et al Hearing Using Zoom for
8 Government RE: Amended Motion to Dismiss Adversary
9 Proceeding. (Doc# 7, 17, 18, 19)

10

11 HEARING re Adversary proceeding: 22-01140-mg Celsius Network
12 Limited et al v. Prime Trust, LLC
13 Hearing Using Zoom for Government RE: Motion to Approve
14 Settlement with Prime Trust, LLC Pursuant to Rule 9019 of
15 the Federal Rules of Bankruptcy Procedure. (Doc # 13)

16

17 HEARING re Hearing Using Zoom for Government RE: Motion to
18 Approve Settlement with Prime Trust, LLC Pursuant to Rule
19 9019 of the Federal Rules of Bankruptcy Procedure.
20 (Doc# 1352)

21

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25 Transcribed by: Sonya Ledanski Hyde

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I N D E X

WITNESSES:	DIRECT:	CROSS:	REDIRECT:	RECROSS:
CHRISTOPHER FERRARO	28	32		
ROBERT COMPAGNA	47	55		
OREN BLONSTEIN	66	82/86/	101	
		96/98/99		

EXHIBITS:	PAGE:
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1 P R O C E E D I N G S

2 CLERK: Again, we're starting the recording for
3 Celsius Network LLC, Case Number 22-10964. This is for the
4 hearing on December 5, 2022 at 10 a.m. For the parties in
5 the courtroom from Kirkland, can you please give your
6 appearances -- start giving your appearances and specify who
7 is in the courtroom and who -- can you hear me?

8 MR. KOENIG: Good morning. Good morning. It's
9 Chris Koenig. We can hear you.

10 CLERK: Okay. Thank you, Chris.

11 MR. KOENIG: Good morning, and for the Debtors
12 today, it will be Patrick Nash, Jr., Ross Kwasteniet, Chris
13 Koenig, Dan Latona, Judson Brown, TJ McCarrick, Ben Wallace,
14 Grace Brier, and we're all here in person.

15 CLERK: Thank you, and are there any --

16 MR. KOENIG: Thank you.

17 CLERK: Thank you so much. Are there any parties
18 from Kirkland that will be speaking on the record this
19 morning that are appearing using Zoom? Okay. I'm going to
20 take that as a no. All right. Do we have creditors
21 committee counsel?

22 MR. COLODNY: Yes. Hi, Deanna. It's Aaron
23 Colodny, from White & Case, on behalf of the Official
24 Committee of Unsecured Creditors. With me today will be my
25 partners, Greg Pesce, Sam Hershey and David Turetsky and I

1 believe Keith Wofford is also on the Zoom.

2 CLERK: Okay. Thank you very much.

3 MR. WOFFORD: That is correct.

4 CLERK: Thank you, Keith. Anyone from the U.S.
5 Trustee's office, if you can come to the podium and make
6 your appearance.

7 MS. CORNELL: Good morning, Deanna. Shara Cornell
8 and Mark Bruh on behalf of the Office of the United States
9 Trustee.

10 CLERK: Okay. Thank you. Is Linda Rifkin going
11 to be joining separately using Zoom?

12 MS. CORNELL: She may be joining via Zoom. Yes.

13 CLERK: Okay. Thank you.

14 MS. CORNELL: Thank you.

15 CLERK: All right. Are there any other parties in
16 the courtroom? Come up to the podium one at a time and give
17 your appearance. Again, any other parties in the courtroom
18 that will be speaking on the record, please come up to the
19 podium one at a time and give your appearance.

20 All right. For the parties that are on Zoom,
21 Deborah Kovsky, are you going to be speaking on the record
22 this morning? Again, Deborah or anyone from Troutman, are
23 you going to be speaking on the record this morning? All
24 right. (indiscernible) maybe one at a time, if the parties
25 can unmute and start giving their appearances if they're

1 speaking on the record. You can use the raise hand function
2 and we'll wind you up one at a time and take your
3 appearance. All right. Josephine -- okay. Sorry. I think
4 David, David Adler, you're first.

5 MR. ADLER: Good morning, Deanna. Can you hear
6 me?

7 CLERK: I can.

8 MR. ADLER: This is David Adler, from McCarter
9 English, on behalf of certain borrowers. I do not intend to
10 speak this morning. But I will be speaking this afternoon.

11 CLERK: Okay. Thank you.

12 MR. ADLER: Thank you.

13 CLERK: You're welcome. We'll take separate
14 appearances at the afternoon hearing as well. All right.
15 Next, Josephine Gartrell.

16 MS. GARTRELL: Good morning. Josephine Gartrell,
17 from Willis Towers Watson, on behalf of the declarants.

18 CLERK: Thank you.

19 MS. GARTRELL: Thank you.

20 CLERK: All right. Arie Peled?

21 MR. PELED: Good morning. Arie Peled, of Venable,
22 LLP, on behalf of creditor, Ignat Tuganov.

23 CLERK: Thank you.

24 MR. PELED: Thank you.

25 CLERK: Layla?

1 MS. MILLIGAN: Good morning. Layla Milligan, with
2 the Texas attorney general's office, appearing on behalf of
3 the Texas State Securities Board and Texas Department of
4 Banking.

5 CLERK: All right. Thank you.

6 MS. MILLIGAN: Thank you.

7 CLERK: All right. Jennifer Rood?

8 MS. ROOD: Jennifer Rood, on behalf of the Vermont
9 Department of Financial Regulation.

10 CLERK: Okay. Thank you. Stephen Manning?

11 MR. MANNING: Stephen Manning, on behalf of the
12 Washington State Department of Financial Institutions.

13 CLERK: Thank you. Virginia?

14 MS. SHEA: Good morning. Virginia Shea, from
15 McElroy, Deutsch, Mulvaney & Carpenter, on behalf of the New
16 Jersey Bureau of Securities and Nicole Leonard of my office
17 may also be appearing.

18 CLERK: All right. Thank you very much. All
19 right. Keith Wofford?

20 MR. WOFFORD: Yes. Good morning. Keith Wofford,
21 from White & Case, on behalf of the committee. As noted
22 before, my colleagues are in the courtroom.

23 CLERK: All right. All right. Mark Lindsey?

24 MR. LINDSAY: Good morning. Yes. Mark Lindsay,
25 Bernstein-Burkley, on behalf of several Earn accounts,

1 customers, Stewart McClain, Keith and Jennifer Riles, Kim
2 David Flora and Brett Flora and Courtney Burkes Steadman.

3 CLERK: Thank you. Emily Devan?

4 MS. DEVAN: Good morning. This is Emily Devan, of
5 Miles & Stockbridge. With me on the call is my colleague,
6 Joel Perrell, and we're here on behalf of creditor, Josh
7 Tornetta.

8 CLERK: Okay. Thank you. All right. Are there
9 any additional parties that have not given their appearance?
10 Rebecca, you -- Rebecca Gallagher? Does she have a question
11 or --

12 MR. DEGIROLAMO: Yes. Tony DeGirolamo,
13 representing Celsius customer, Eric Wohlwend.

14 CLERK: I'm sorry. Can you say who you are
15 representing again?

16 MR. DEGIROLAMO: Yes. Eric Wohlwend, W-O-H-L-W-E-
17 N-D.

18 CLERK: Okay. Thank you.

19 MS. GALLAGHER: She never unmuted me.

20 CLERK: Yes. Rebecca, did you need to speak?

21 MS. GALLAGHER: Yes. I will be speaking today as
22 a pro se.

23 CLERK: Okay. So Rebecca Gallagher. Thank you.

24 MR. HERRMANN: Immanuel Herrmann, pro se, Celsius
25 creditor.

1 CLERK: Thank you, Mr. Herrmann. All right. For
2 the parties that have joined, is there anyone that is going
3 to be speaking on the record this morning that has not given
4 their appearance yet? If you are going to be speaking on
5 the record and have not given your appearance, please raise
6 your hand and I will ask you to unmute one at a time and
7 take your appearance.

8 All right. The party that joined as Kirkland, can
9 you please identify yourself for the record? Again, the
10 party that joined just as Kirkland, can you just identify
11 yourself? If you do not identify yourself, I'll have to put
12 you back in the waiting room. All right. Last call. The
13 party that joined as Kirkland, if you could please identify
14 yourself.

15 MS. JONES: Deanna, this is -- this is Elizabeth
16 in the courtroom. It may be a Kirkland listen-only line.
17 I'll just check with our team really fast.

18 CLERK: Yeah. If you could, that would be great.
19 Thank you.

20 MS. JONES: Yeah.

21 CLERK: All right. Georges Georgiou? My
22 apologies if I mispronounced your name. Are you making an
23 appearance this morning? Are you speaking?

24 MR. GEORGIU: I am. Yes, please. Georges
25 Georgiou, pro se creditor.

1 CLERK: Thank you so much. All right. Karen
2 Cordry?

3 MS. CORDRY: Yes. Karen Cordry, National
4 Association of Attorneys General, and I'm appearing on behaf
5 of the coordinating states listed on my motion and I'm going
6 to speak briefly today.

7 CLERK: All right. All right. So is there anyone
8 here for the 2 o'clock hearing? We're going to -- I mean, I
9 don't know if we're going to go straight through. I'm
10 assuming we're going to take a recess and you can rejoin for
11 2 o'clock and we'll be taking separate appearances for 2
12 o'clock. So I just want to inform everyone of that. Nelly
13 Almeida?

14 MS. ALMEIDA: Good morning. Nelly Almeida, from
15 Milbank LLP, representing certain holders of preferred
16 equity. I don't expect to be speaking. But I wanted to
17 make the appearance.

18 CLERK: All right. Thank you. Stephen Manning?

19 MR. MANNING: Yeah. I entered my appearance
20 earlier. Just to clarify, I don't plan on speaking this
21 morning.

22 CLERK: All right. Thank you. All right. Bryan
23 Kotliar?

24 MR. KOTLIAR: Hi. Good morning. Bryan Kotliar,
25 of Togut, Segal & Segal, counsel to the ad hoc group of

1 custodial accountholders. I don't plan on speaking today.

2 CLERK: Thank you. All right. Carl Wedoff?

3 MR. WEDOFF: Hi. Good morning, Deanna. This is
4 Carl Wedoff, from Jenner & Block, on behalf of the examiner.
5 We don't plan on speaking this morning either. But I did
6 want to note my appearance.

7 CLERK: All right. Thank you, Carl.

8 MS. JONES: Deanna, this is Elizabeth in the
9 courtroom again. We were the Kirkland listen-only line, our
10 Chicago office. Just let us know if you'd like them to
11 unmute and announce. It's just a listen-only line.

12 CLERK: Oh, that's fine. I just wanted to make
13 sure. Thank you.

14 MS. JONES: Thank you.

15 CLERK: All right. For the parties that have
16 joined, if anyone is going to be speaking on the record this
17 morning, please unmute your line one at a time and just give
18 your appearance and also please use the raise hand function
19 and I'll take your appearances one at a time.

20 All right. Any of the parties that have joined,
21 please let me know if you will be speaking on the record
22 this morning, and if you'd like to make an appearance. If
23 so, please use the raise hand function.

24 CLERK: All rise.

25 THE COURT: All right. Good morning, everyone.

1 Please be seated.

2 CLERK: Good morning, Judge.

3 THE COURT: Yes, Deanna?

4 CLERK: I think Mr. Frishberg wanted to make an
5 appearance, and then would you like me to read into the
6 record the language for the hearing?

7 THE COURT: Yes. But please, I'm just
8 reconnecting on my computer.

9 CLERK: Okay. Mr. Frishberg, if you could unmute
10 and give your appearance, please.

11 MR. FRISHBERG: Yeah. Daniel Frishberg, pro se.

12 CLERK: All right. Thank you. All right. Please
13 pay attention to the following information. All persons are
14 strictly prohibited from making any recording of court
15 proceedings, whether by video, audio, screenshot or
16 otherwise. Violation of this prohibition may result in the
17 imposition of monetary and nonmonetary sanctions.

18 The clerk of the court maintains an audio
19 recording of all proceedings which constitutes the official
20 record. Parties must state their name each time they speak
21 on the court record. A party waiting to join with a full
22 first and last name will be admitted from the waiting room.
23 Parties that join with initials, partial name, a designation
24 such as iPhone, et cetera, will not be admitted.

25 THE COURT: It's just going to take me another

1 minute here to connect.

2 CLERK: Sure.

3 THE COURT: All right. Good morning, everyone.

4 We have a long agenda today, both this morning and this

5 afternoon. So why don't we get started. We'll go -- the

6 second amended agenda was posted on the docket this morning.

7 It's ECF Docket Number 1595. So let's begin. Who's going

8 to begin for the debtors?

9 MR. NASH: Good morning, Your Honor. Pat Nash,

10 from Kirkland & Ellis, on behalf of the debtors. Your Honor

11 --

12 CLERK: Sorry, Judge. We can't hear you. Can you

13 hear me?

14 THE COURT: All right. I think the problem was

15 two connections.

16 CLERK: Yeah.

17 THE COURT: Go ahead, Mr. Nash. Can you hear Mr.

18 Nash, Deanna?

19 CLERK: Yes, I can. Pedro is on his way down to

20 help me.

21 THE COURT: That's okay. We're fine, I think. Go

22 ahead, Mr. Nash.

23 CLERK: Okay. Thank you.

24 MR. NASH: Your Honor, in connection with the

25 motion, the debtors filed four declarations. It would be

1 our preference and intent, Your Honor, to make our
2 evidentiary case by way of the declarations and make those
3 declarants available for cross-examination.

4 THE COURT: Yeah. So why don't you offer the
5 declarations in evidence and, in due course, each one will
6 be available for cross-examination.

7 MR. NASH: Your Honor --

8 THE COURT: Identify the declarant and the ECF
9 docket number for the declaration.

10 MR. NASH: Your Honor, if it pleases the Court, we
11 had discussed with the UCC putting each declarant on just to
12 identify themselves for the Court and a little bit about
13 their background and then move to get the declaration
14 admitted, thereby giving the declarant an opportunity to
15 warm up, so to speak.

16 THE COURT: All right. Do you want -- do you have
17 -- I also -- you posted a little while ago a presentation as
18 well.

19 MR. NASH: I don't intend to open the hearing with
20 that presentation, Your Honor.

21 THE COURT: All right. So how do you wish to
22 proceed then, Mr. Nash?

23 MR. NASH: I think, Judge, unless -- if Your Honor
24 thinks that you would benefit by way of opening statements,
25 we could do that, although I'm mindful that if I make an

1 opening statement, then everybody makes an opening
2 statement.

3 THE COURT: I've read everything.

4 MR. NASH: I know you have, Your Honor. So if
5 it's okay with you, Judge, I think we should get right in to
6 the evidence and --

7 THE COURT: That's fine.

8 MR. NASH: All right. Thank you, sir. I'm going
9 to turn the podium over to my partner, Mr. Brown.

10 THE COURT: Okay.

11 MR. BROWN: Good morning, Your Honor. Judson
12 Brown, from Kirkland & Ellis, on behalf of the Debtors.
13 Your Honor, at this time, the debtors call Chris Ferraro to
14 the stand.

15 THE COURT: All right. Mr. Ferraro, if you would
16 come up and raise your right hand and you'll be sworn.

17 CLERK: Please raise your right hand. Do you
18 solemnly swear or affirm that the testimony you're about to
19 give this Court will be the truth --

20 MR. FERRARO: Yes.

21 CLERK: -- the whole truth and nothing but the
22 truth?

23 MR. FERRARO: Yes, I do.

24 THE COURT: All right. Please have a seat. Go
25 ahead, Mr. Brown.

1 MR. BROWN: Thank you, Your Honor.

2 DIRECT EXAMINATION OF CHRISTOPHER FERRARO

3 BY MR. BROWN:

4 Q Could you please introduce yourself to the Court?

5 A Hi. My name is Christopher Ferraro. I'm the acting
6 chief executive officer, chief restructuring officer and
7 chief financial officer for Celsius, the debtors.

8 Q When did you join Celsius, Mr. Ferraro?

9 A I joined March 21, 2022.

10 Q In the approximately nine months that you've been with
11 the company, can you just give the Court a brief description
12 of the roles that you've had with Celsius?

13 A Yes. I started off managing financial planning and
14 analysis, so financial analysis as well as investor
15 relations. That role that I had in that capacity up and
16 through July 11, 2022, where I was appointed the CFO right
17 before the petition.

18 I held that role, and I continue to hold that role
19 until this day. My responsibilities widened on September
20 27th, I believe, 2022, where I was named acting chief
21 restructuring officer or, sorry, chief restructuring officer
22 and acting chief executive officer.

23 Q Now you said you joined Celsius in March of 2022. Can
24 you just describe for the Court what you did before joining
25 Celsius at that time?

1 A Yeah. I had a long career with JP Morgan and Chase
2 where I ran financial analysis and many other kind of roles
3 within the financial organization, spent nearly two decades
4 there.

5 Then I went to Cerberus Advisory Company in which I
6 worked on a few kind of legacy positions, some banks in
7 Germany, restructuring costs, trying to improve
8 profitability, optimizing the balance sheet. And then I
9 went on a long sabbatical. I own a couple farms in Ecuador.
10 So I spent two to three years kind of on the ground managing
11 and developing those farm.

12 Q So why did you decide to join the crypto sector in
13 March of this year, Mr. Ferraro?

14 A I think it's a very exciting technology that has
15 massive kind of impact on society. My farms are in very
16 rural areas of Ecuador, impoverished, very little
17 opportunity.

18 And the first day I'm seeing folks lined up outside the
19 banks on Fridays waiting in line for hours when they need to
20 be working to feed their family I think had an effect on me,
21 along with, you know, it's a technology space. So there's
22 great flexibility in where I work. My family's in Quito,
23 Ecuador. So I spend part of the year there and I'm also
24 able to spend part of the year where I'm from in Seattle,
25 Washington.

1 Q Now Mr. Ferraro, I want to turn to the reason we're
2 here today, the debtors' motion to establish ownership of
3 Earn assets and to sell certain stablecoin. Did you file a
4 declaration in support of the debtors' motion?

5 A Yes, sir. I did.

6 Q I want to take a look at that.

7 MR. BROWN: Your Honor, may I approach?

8 THE COURT: Yes. Go ahead. So your office
9 delivered a lot of large binders today.

10 MR. BROWN: Your Honor, I have the docket number,
11 if that's helpful.

12 THE COURT: Well, do you know -- well, if you have
13 extra copies --

14 MR. BROWN: I do.

15 THE COURT: All right.

16 MR. BROWN: I absolutely do, Your Honor.

17 THE COURT: Let's do that.

18 MR. BROWN: May I?

19 THE COURT: Yeah. Please. Thank you.

20 MR. BROWN: Mr. Ferraro.

21 BY MR. BROWN:

22 Q Mr. Ferraro, I've handed you a document that's marked -
23 - or sorry, that was filed on the docket at Entry 1326. Do
24 you have that in front of you?

25 A Yes. I do.

1 Q And do you recognize it?

2 A Yes. I do.

3 Q What is it?

4 THE COURT: Just hang on a second. Whoever is
5 connecting over Zoom needs to mute their connection. If you
6 don't, you will be disconnected. Go ahead.

7 CLERK: Sorry, Judge.

8 THE COURT: Yes?

9 CLERK: Can you see the document on your side?

10 THE COURT: No.

11 MR. BROWN: So actually, thank you, Deanna. If
12 you can give my colleague, Jose Lopez, privileges to share
13 the document, we can share it on the screen.

14 THE COURT: Okay.

15 CLERK: Okay. Use the -- thank you.

16 MR. BROWN: Thank you.

17 THE COURT: Thanks, Deanna.

18 BY MR. BROWN:

19 Q And now, Mr. Ferraro, you have in front of you and
20 we've put on the screen the document that was filed at
21 Docket Entry 1326. What is this document, sir?

22 A This is my declaration in support of the motion
23 regarding ownership of Earn assets and the sale of certain
24 stablecoins.

25 Q And Mr. Ferraro, is the testimony in here true and

1 accurate?

2 A Yes, sir.

3 Q And is that your signature at the end of the
4 declaration, sir, electronically?

5 A Yes, sir. It's my electronic signature.

6 Q And do you adopt the testimony in this declaration as
7 your testimony here today, Mr. Ferraro?

8 A Yes, I do.

9 MR. BROWN: Your Honor, at this time, the Debtors
10 would offer Mr. Ferraro's declaration filed at Docket Entry
11 1326 into evidence as his direct examination. He is
12 obviously here and subject to cross-examination.

13 THE COURT: Are there any objections to the Court
14 admitted into evidence Mr. Ferraro's declaration, ECF 1326?
15 All right. Hearing none, it's admitted into evidence.

16 MR. BROWN: Your Honor, that's it for me at this
17 time.

18 THE COURT: All right. Let me ask who within the
19 courtroom, if anyone, wishes to cross-examine Mr. Ferraro.

20 Ms. Cornell?

21 So Shara Cornell, of the U.S. Trustee's office, is
22 approaching the podium.

23 MS. CORNELL: Thank you, Your Honor.

24 THE COURT: Good morning.

25 CROSS-EXAMINATION OF CHRISTOPHER FERRARO

1 BY MS. CORNELL:

2 Q Mr. Ferraro, are you familiar with the budget filed on
3 the Court docket at ECF Number 1111, on October 17, 2022?

4 A I'm familiar with the capital budgets that have been
5 filed on the docket. Yes.

6 MS. CORNELL: May I approach, Your Honor?

7 THE COURT: Certainly.

8 MS. CORNELL: This is United States Trustee's
9 Exhibit A.

10 THE COURT: I'm sorry?

11 MS. CORNELL: Exhibit A.

12 THE COURT: Thank you.

13 THE WITNESS: Thank you.

14 BY MS. CORNELL:

15 Q Mr. Ferraro, are you familiar with the following budget
16 that I just provided to you marked as United States
17 Trustee's Exhibit A? This was provided to the United States
18 Trustee's office on December 3, 2022.

19 A Yes, ma'am.

20 Q Is the document in front of you dated November 15,
21 2022, weekly cash flow forecast, consolidated Debtors?

22 A Yes.

23 Q To your knowledge, has this document been filed yet?

24 A I don't specifically know. if it's on the docket, I
25 assume it has.

1 Q It has not been filed.

2 A Oh. Then --

3 THE COURT: Well, then I misunderstand because you
4 identified it as ECF Document 1111.

5 MS. CORNELL: I'm sorry, Your Honor. This is a
6 new -- this is a new budget. That's why I'm -- this isa
7 new budget that was only provided to the United States
8 Trustee's office.

9 THE COURT: Okay. So this is not ECF 1111.

10 MS. CORNELL: This is not ECF Docket Number 1111.
11 This is a different budget dated November 15, 2022, provided
12 to the United States Trustee on December 3, 2022.

13 THE COURT: Okay.

14 BY MS. CORNELL:

15 Q Do you know when this document will be filed with the
16 Court?

17 A We usually file one of these once per month along with
18 the coin report and maybe the MORs.

19 Q Sure. The last budget was filed on October 17, 2022.
20 Today is December 5, 2022. Can you and your counsels commit
21 to filing an updated budget with the Court within the next
22 two days?

23 THE COURT: Ms. Cornell, just conduct your cross-
24 examination.

25 MS. CORNELL: Okay.

1 THE COURT: Okay?

2 MS. CORNELL: Okay.

3 BY MS. CORNELL:

4 Q According to the budget that you provided to our
5 office, when will the Debtors, on a consolidated basis, need
6 an infusion of liquidity?

7 A Late first quarter 2023. It gets quite tight in
8 February. And then in March, we'll need additional
9 liquidity.

10 Q For the record, what does need an infusion of liquidity
11 mean to you?

12 A We need (indiscernible) cash to pay our obligations,
13 namely employees, professional fees, other vendor expenses,
14 et cetera.

15 Q So according to your testimony just now, you believe
16 that you'll need an infusion of liquidity close to the end
17 of February/early March of 2023; is that correct?

18 A Yes.

19 Q Will any of the individual Debtors, not on a
20 consolidated basis, require an infusion of liquidity prior
21 to that date?

22 A We -- I believe on the docket, for the last publicly
23 filed one, had mining kind of needing liquidity in January
24 of 2023. Subsequently, now these are internal kind of
25 forecasts, which should be posted shortly, it looks as

1 though mining and the consolidated Debtors are kind of in
2 the same position now, really mid-March, March --

3 THE COURT: When you say same position, what do
4 you mean?

5 THE WITNESS: Both needing liquidity around the
6 same time in March. This was because some of the mining
7 kind of power deposits, we originally had forecasted that
8 they would all be fixed-rate blocks. So we'd be locking in
9 fixed hedges which come up with higher deposits.

10 We have now decided that we are going to, based
11 upon kind of the market backdrop, do variable blocks. We
12 can fix these blocks at any point in time. They come with
13 lower power deposits upfront. So that kind of pushed out
14 the cash flows a little bit for mining and put us in a
15 better spot.

16 BY MS. CORNELL:

17 Q Okay. So just for clarification and for the record,
18 it's your testimony today that both on a consolidated basis
19 and on an individual basis for each of the Debtors, that
20 they will not need an infusion of liquidity or cash until
21 March of 2023?

22 A That's my latest understanding. Yes.

23 Q On either a consolidated basis or an individual Debtor
24 basis, are the projections that you just provided taking
25 into account the Prime Trust settlement?

1 A It doesn't impact this. The Prime Trust settlement
2 will be returning coins, not to my understanding.

3 Q The DeFi payments?

4 THE COURT: I'm sorry? Ask your question again.

5 MS. CORNELL: Oh, I'm sorry.

6 BY MS. CORNELL:

7 Q On either a consolidated basis or an individual Debtor
8 basis, are the projections you just provided taking into
9 account the DeFi payments?

10 A To pay off what we requested relief to pay off for DeFi
11 (indiscernible) around \$3 million. Yes. That's embedded
12 in, to my understanding off memory. Yes. It's about \$3
13 million.

14 Q Okay. On either a consolidated basis or on an
15 individual Debtor basis, are the projections you just
16 provided taking into account the proposed sale of GK8?

17 A No.

18 Q At what point would your projections include the
19 proceeds of the sale of GK8?

20 A When we believe it's certain and likely and probable
21 that it will close and we understand the timing. So we're
22 hopefully getting closer and closer to that point. But
23 right now, given the backdrop, it's hard to, with certainty,
24 include that type of deal closing in the cash flows given,
25 you know, the main fear here is entering kind of

1 administrative insolvency and not being able to fund
2 (indiscernible) obligations.

3 Q But to your knowledge, the company or Alvarez, in
4 conjunction with the company, have not performed a separate
5 cash flow budget forecast taking into account the GK8 sale.

6 A We know roughly what those proceeds would be if they
7 come to the estate. So that would give us, you know, call
8 it another month-and-a-half to two months of runway.

9 Q Do the Debtors support any non-Debtor entities' ongoing
10 operations?

11 A We have push funding (indiscernible) intercompany
12 lending to some of the non-Debtors. The Israeli entity and
13 the UK entity have received some funding. Yes.

14 Q On the budget that was marked as United States
15 Trustee's Exhibit A, can you point to any line items that
16 would deal with non-Debtor disbursements?

17 A I'm not -- I can't remember off memory if we had any
18 additional disbursements funded to the non-Debtors in this
19 forecast. GK8 is to the tune of around \$500,000 per month
20 as kind of their funding need. And I don't have the Israeli
21 entity off the top of my mind. So it could be an additional
22 million dollars or something that wasn't included here. But
23 typically we would include those required fundings on the
24 Debtors, consolidated Debtors' statement.

25 Q Okay. As of today's date, the budget that is marked as

1 United States Trustee's Exhibit A does not break out those
2 types of costs.

3 THE COURT: I don't understand your question.

4 MS. CORNELL: I'm saying that this budget does not
5 break that out, and it's --

6 THE COURT: Doesn't break out what?

7 MS. CORNELL: Any payments or line items for
8 ongoing operational expenses for non-Debtor entities.

9 BY MS. CORNELL:

10 Q Is that accurate?

11 A Yeah. It's not listed here in detail. Like I said,
12 it's to the tune of around a half a million dollars a month
13 for GK8 and I think Israel is close to that as well, the
14 Israeli entity. So maybe a million a month. So if there
15 was a couple months' funding needed, it would be a total of
16 about \$2 million, which would be included, to my
17 understanding, in the numbers. It's just not broken out
18 separately to your point.

19 Q If the preferred shareholders succeed in their
20 assertion that the value for GK8 and/or mining inure to the
21 preferred shareholders, do you anticipate any type of
22 recoupment of those operational funds paid during the
23 pendency of this bankruptcy case?

24 A There's intercompany loans. So I would assume that the
25 loans would have to be extinguished in that example that you

1 gave, Ms. Cornell.

2 Q What about, for example, if we were considering what
3 you suggested was about a \$500,000 ongoing monthly payment
4 to GK8? If GK8, as the preferred shareholders assert, if
5 the value of GK8 actually inures to the preferred
6 shareholders, do the Debtors intend to recoup the
7 operational expenses that they're expending at this point in
8 time?

9 A That would be my understanding.

10 Q Okay. Have the Debtors explored other avenues other
11 than the proposed sale of \$18 million worth of stablecoin?

12 A Yes. We have. You know, we looked at all of the
13 different funding stack, all of the different opportunities.
14 The cheapest is the discussion that we're having here today
15 about selling stablecoin. It comes with really no
16 transaction costs, no borrowing costs.

17 The most expensive would be debtor-in-possession
18 financing. This could be anywhere of 20-plus percent kind
19 of cost to the estate per year. And, you know, then in
20 between you have kind of secured financing on DeFi
21 (indiscernible) or through centralized counterparties which
22 carries its own risk, right. As we've all read in the
23 newspaper, these types of lending agreements would require
24 us to post collateral. And given the backdrop, at least in
25 the cryptocurrency industry, that carries a risk there that

1 your collateral may not be returned.

2 So probably the cheapest is stablecoin, and the most
3 expensive is PIP financing, DeFi borrowings and kind of
4 centralized counterparties in the mix.

5 Q Would the stablecoin that you're seeking to sell today
6 be used as collateral for such a debtor-in-possession loan
7 in the future?

8 A Not to my understanding, no.

9 Q To your understanding, could they be used?

10 A It wouldn't make sense to pay interest to borrow
11 (indiscernible) basically something that's exchangeable for
12 (indiscernible). We would be paying 20, 25 percent out for
13 what effectively is interchangeable currencies.

14 Q Okay. Would the sale of the stablecoin you seek to
15 sell today impact a potential in-kind distribution to
16 creditors?

17 A The way I view it is it's all property of the estate.
18 So everything impacts the distribution to creditors. The
19 more the case extends, right, the less available to them,
20 the most costs there are. So I mean, it's not really the
21 sale of stablecoins that impacts the estate. It's more of
22 kind of the passage of time and the expense related to the
23 case.

24 Q To your knowledge, have the Debtors exchanged any other
25 types of cryptocurrency for stablecoins postpetition?

1 A Postpetition, no. There's no coin movement. We're not
2 allowed to exchange or trade coins or liquidate coins
3 without Court approval.

4 THE COURT: Let me ask you a question, Mr.
5 Ferraro. I think at the first day hearing, Mr. Nash,
6 Debtors' counsel, Mr. Nash, said that the Debtors hoped to
7 have an in-kind distribution to creditors, in-kind meaning
8 whatever type of crypto they deposited, they would receive a
9 distribution in kind.

10 If the Debtors were to sell all of the stablecoin,
11 if the Court determined it was property of the estate and
12 the Debtor sold all of that stablecoin, I think this goes to
13 Ms. Cornell's question. How would the Debtor be able to
14 make an in-kind distribution of stablecoin to the creditors,
15 the accountholders who had deposited stablecoin? You
16 wouldn't have it anymore.

17 THE WITNESS: Yeah. That's a good point. My
18 understanding is that as we get cash in the door, we will be
19 converting that back to coin to distribute. So cash would
20 convert back to coin for in-kind distribution. So whether
21 it's stablecoin sold from (indiscernible) if we collect on
22 EFH, that'll go back into purchasing coin that will then be
23 returned to the estate.

24 THE COURT: Thank you.

25 THE WITNESS: So it's really the usage of the cash

1 and the resources.

2 THE COURT: Thank you. Go ahead, Ms. Cornell.

3 MS. CORNELL: Thank you.

4 BY MS. CORNELL:

5 Q How was it determined that \$18 million worth of
6 stablecoin should be sold?

7 A Yeah. So we looked at our total stablecoin holdings,
8 and I believe Robert Compagna's declaration laid this out in
9 the back, we look at what's in the main Fireblocks account
10 as well what's in the custody workspace and then we reduce
11 all of the stablecoin, what we're referring to is reserved
12 liabilities, including custody, withheld and any collateral
13 that was posted as part of the borrower's program.

14 THE COURT: That's how you got to the \$18 million?

15 THE WITNESS: That's how we get to the \$18
16 million, yeah, which is effectively the stablecoin related
17 to the (indiscernible).

18 BY MS. CORNELL:

19 Q To your knowledge, will the Debtors seek to sell
20 additional stablecoin in the future for liquidity purposes?

21 A No. This is -- we need the rest in order to kind of
22 allow for the custody and withheld (indiscernible) and we're
23 holding back some due to the borrowers' kind of collateral
24 program given that that's a key kind of legal question
25 outstanding.

1 THE COURT: Is the \$18 million all of the
2 stablecoin other than withhold, custody, borrowing?

3 THE WITNESS: That's absolutely correct, Your
4 Honor. Yes.

5 THE COURT: Okay.

6 BY MS. CORNELL:

7 Q What will the proceeds of the sale of stablecoin today
8 be used to fund?

9 A Yeah. So it will be used to fund payroll. It will be
10 used to fund vendor expenses, non-labor expenses. It's used
11 to fund all of the people in the courtroom sitting here
12 today. It's a very expensive case. So Debtors' advisor,
13 committee advisors, ad hoc groups, U.S. Trustee, et cetera.
14 So, you know, this is a very complex and long -- it appears
15 -- it feels at least from me sitting --

16 THE COURT: I think the ad hoc committees would
17 probably like very much that you said they would be paid by
18 the Debtors because (indiscernible) --

19 THE WITNESS: Sorry. Strike that. But it's a
20 very expensive case, and it has a lot of complex items in
21 there. So it'll largely go to fund the case and then also
22 some of the internal processes.

23 BY MS. CORNELL:

24 Q So to confirm for the record, the proceeds from the
25 sale today will not go to the mining business?

1 A I mean, mining will need liquidity sometime in March.
2 So if we have to -- we'll have to find liquidity from
3 mining. That could either be done through an intercompany
4 loan or it could be done through selling other mining
5 assets, say rigs.

6 We have some coupons for the manufacturers for credits
7 because the rig costs have come down. So, I mean, there are
8 things that potentially we could do to raise liquidity in
9 mining. But at some point in time, mining will need
10 additional liquidity . if that would be done, it would
11 likely be done with an intercompany loan, I would assume.

12 Q So is it your testimony here today that the majority of
13 the proceeds of the sale of stablecoin will go to fund the
14 reorganizational expenses in this case, including Chapter 11
15 expenses and professional fees?

16 A Yes.

17 Q To your knowledge, can you estimate on a monthly basis
18 what that burn rate would be?

19 A So the burn rate related to kind of advisors is between
20 \$15 to \$20 million per month. As I stated before, Ms.
21 Cornell, the mining business is largely from an operational
22 standpoint cash-flow positive. There are some kind of tail
23 end buildouts and power deposits, sales and use tax as we
24 employ rigs that still need to go out through kind of the
25 first quarter. But in general kind of mining is self-

1 sustainable once we get through that. And then the non-
2 mining Debtors still has a small burn rate. But we've cut
3 expenses drastically 70 to 80 percent and that burn rate is
4 really minimized now.

5 Q Will any of the proceeds from the sale of stablecoin
6 here today be used -- just one moment. Will any of the
7 proceeds of sale of stablecoin today be used to pay sales
8 and use taxes?

9 A Again, back to the mining needs, right, when I say by
10 the end of the March, we will need to fund mining, the sales
11 and use taxes are more early on in the quarter, the first
12 quarter 2023. So we should have liquidity to pay for those
13 as those get -- as those rigs get deployed. So I think of
14 cash as fungible within mining. So it's hard for me to say
15 what every dollar is used for. But in theory we should have
16 enough to pay, as we deploy rigs, the sales and use tax.
17 But in March, we will need liquidity for mining.

18 MS. CORNELL: Okay. Thank you. That's all today.

19 THE COURT: Any other cross-examination of Mr.
20 Ferraro? You're excused. Thank you very much. Well, I
21 should -- any redirect?

22 MR. BROWN: No, Your Honor.

23 THE COURT: No? You're excused. Thank you very
24 much for your testimony.

25 MR. BROWN: Your Honor, I'm going to hand the

1 baton to my partner, Ben Wallace.

2 THE COURT: Okay.

3 MR. WALLACE: Your Honor, good morning.

4 THE COURT: Good morning.

5 MR. WALLACE: Ben Wallace, from Kirkland & Ellis,
6 on behalf of the Debtors. The Debtors call Mr. Robert
7 Compagna to the stand.

8 THE COURT: All right. Mr. Compagna, come on up.
9 If you would raise your right hand, you'll be sworn.

10 CLERK: Do you solemnly swear or affirm that the
11 testimony you're about to give this Court will be the truth,
12 the whole truth and nothing but the truth?

13 MR. COMPAGNA: I do.

14 THE COURT: Thank you very much. Have a seat.

15 MR. COMPAGNA: Thank you.

16 MR. WALLACE: May I, Your Honor?

17 THE COURT: Go ahead, Mr. Wallace.

18 DIRECT EXAMINATION OF ROBERT COMPAGNA

19 BY MR. WALLACE:

20 Q Good morning, sir.

21 A Good morning.

22 Q Please introduce yourself to the Court.

23 A Hi. My name is Robert Compagna. I'm the managing
24 director in the restructuring practice of Alvarez & Marsal.

25 Q What is Alvarez & Marsal, sir?

1 A Alvarez & Marsal is a multidisciplinary consulting
2 firm, with a focus -- one of the main focuses being
3 restructuring.

4 Q And how long have you been working as a restructuring
5 advisor?

6 A I've been at A&M for about 20 years, and I've been in
7 the restructuring space for over 25.

8 Q Are you certified as a restructuring advisor?

9 A I am, yes. I'm a certified insolvency and
10 restructuring advisor.

11 Q And other than that certification, do you have any
12 training or certifications relevant to this case?

13 A I started my career at Arthur Anderson and trained as a
14 CPA and hold a CPA designation which I've since gone
15 inactive on. But yeah, I have a CPA designation.

16 Q Have you --

17 THE COURT: Which office are you in?

18 THE WITNESS: I'm in the New York office.

19 BY MR. WALLACE:

20 Q Have you served as a restructuring advisor in other
21 bankruptcy cases?

22 A Yes. Many, many cases.

23 Q Mr. Compagna, do you have experience projecting and
24 helping an estate managing its cash flow?

25 A Ye. Managing cash flow is one of the services we tend

1 to provide in each of our cases.

2 Q And do you have experience identifying assets that an
3 estate might want to sell to generate additional cash flow?

4 A Part that liquidity management process, yes, that's
5 something we do.

6 Q In this case, did you perform analysis projecting the
7 Debtors' cash flow?

8 A We did. Yes.

9 Q And did you perform analysis identifying assets that
10 the Debtors might want to sell to generate additional
11 liquidity?

12 A Yes. We did.

13 Q And are the findings of that analysis contained in a
14 declaration that you filed in support of this motion?

15 A Certain of those findings, yes, are contained in the
16 declaration filed here.

17 Q And would you recognize that declaration if I showed it
18 to you?

19 A I would.

20 MR. WALLACE: Your Honor, may I approach?

21 THE COURT: Yes. Go ahead. Thank you, Mr.
22 Wallace.

23 MR. WALLACE: You're welcome

24 BY MR. WALLACE:

25 Q Mr. Compagna, what have I just handed you?

1 A It looks like a copy of the docketed declaration I
2 filed in support of stablecoin, the stablecoin sale and Earn
3 assets.

4 Q Do you see the docket ID at the top?

5 A I do. Yes. 132- --

6 Q Could you read that into the record? I'm sorry, sir.
7 Go ahead.

8 A Yeah. Docket Number 1328.

9 Q Okay. Could you take a look at the seventh page for
10 me?

11 A Okay. I'm there.

12 Q Is that your signature?

13 A It is. Yes. My electronic signature.

14 Q And the following page after the blank one?

15 A Yes. I'm there.

16 Q Is that an exhibit you filed in connection with the
17 declaration?

18 A It is. Yes.

19 Q Is the declaration testimony and everything contained
20 in the exhibit true and accurate to the best of your
21 knowledge?

22 A It is, yes.

23 Q Mr. Compagna, do you adopt the declaration and the
24 attached exhibit as your testimony for purposes of today's
25 hearing?

1 A I do.

2 MR. WALLACE: Your Honor, we move this, what has
3 been marked on the docket as Docket Number 1328, into
4 evidence.

5 THE COURT: Any objections? All right. Mr.
6 Compagna's declaration dated November 11, 2022, it is ECF
7 1328, is in evidence.

8 MR. WALLACE: And Your Honor, that's it for me,
9 unless you think it would be helpful for us to walk through
10 the math behind Exhibit A, how we got to the \$18 million.
11 I'm happy to do that now. I'm happy to do that afterwards,
12 if there are other questions.

13 THE COURT: Why don't you do that now?

14 MR. WALLACE: Great. Okay.

15 BY MR. WALLACE:

16 Q So Mr. Compagna, would you please flip to Exhibit A in
17 your declaration, please, the chart you prepared?

18 A Okay. I'm there.

19 Q And I just want to walk through the math behind this
20 declaration. So when you were trying to figure out the
21 amount of stablecoin to propose to sell, what was the first
22 step?

23 A The first step was we identified the quantum of
24 stablecoin that the company had available. We primarily
25 looked at what was available -- was in Fireblocks system,

1 essentially readily available deposited funds. We also
2 looked at those available in the custody program.

3 Q Okay. So you mentioned funds on Fireblocks. Where is
4 that shown on the chart here?

5 A The first -- under the blue box, the first two columns
6 listed as main account show the quantity for each of the 11
7 stablecoin types here and the U.S. dollars based on the
8 conversion rates, the prices you see on the left that are on
9 the main Fireblocks account.

10 Q So let's take a concrete example. Am I right in
11 thinking that the first row relates to a coin called USDC?

12 A Correct.

13 Q And what is the amount of coin, of USDC, that Celsius
14 had in its main accounts?

15 A It had 3.1 million coins and it's pretty much \$3.1
16 million because they traded at -- stablecoins by nature are
17 attempting to be pegged to the U.S. dollar, so you see 1.00
18 is the purchase price.

19 Q And what is the amount of USDC that Celsius had in its
20 custody account?

21 A 36.1 million.

22 Q Okay. So once you have that 3.1 million and that 36.1
23 million, what did you do with those two figures?

24 A So we sum those together as roughly 39 -- a little over
25 \$39 million and then we moved to look at what we call here

1 the reserve liabilities.

2 Q And what are those?

3 A The reserve liabilities incorporate three liabilities
4 that Mr. Ferraro went over (indiscernible) it's liabilities
5 under the custody program, so coins we owe back to
6 depositors tagged as custody. The same for customers within
7 the withheld, withheld accounts. And the third is
8 collateral serving -- coins serving as collateral in our
9 retail lending and institutional lending programs.

10 Q So in this USDC row, I see 44.6. What does that number
11 mean?

12 A That represents the sum of those three potential
13 obligations. So in the case of USDC, the roughly 39 million
14 of stablecoin is less than 44 million in reserve
15 liabilities. So when you move to the far right, the net
16 current asset is zero and we're not proposing to sell any
17 USDC stablecoin.

18 Q And can you just explain that to me? What does that
19 mean, that the reserve liabilities are more than Celsius
20 currently holds?

21 A It means when you look at the custody liabilities, the
22 sum of the withheld liabilities and collateral -- potential
23 collateral that needs to be returned, the company has more
24 liabilities than they hold coin of that type.

25 Q So for a particular coin, if Celsius has more

1 liabilities than the coin they currently hold, is Celsius
2 proposing to sell any of that stablecoin?

3 A No. We're not.

4 Q Is there an example where that is not the case, where
5 Celsius has more than the reserve liabilities on this
6 spreadsheet?

7 A Yes. The second line, USDT 20 shows, yeah, there's an
8 area where we have excess.

9 Q And I don't want to walk through it in as much detail
10 as we did for the first one. But can you just tell us the
11 basic math that got you to the 16.4 million coins?

12 A Sure. If you look at the main accounts, there's
13 roughly \$17.8 million worth of coin available. In the
14 custody program, only 1.9 million of coin. So again,
15 approaching \$20 million worth of coin held. And the reserve
16 liabilities for that particular coin type are only \$3.3
17 million. So there's an excess of 16.4 available.

18 Q Mr. Compagna, in total, how much stablecoin is Celsius
19 proposing to sell?

20 A According to this page, 18.1 million.

21 Q Thank you, sir.

22 MR. WALLACE: Nothing further.

23 THE COURT: All right. Cross-examination?

24 MS. CORNELL: Hello, again. Shara Cornell, on
25 behalf of the Office of the United States Trustee.

1 CROSS-EXAMINATION OF ROBERT COMPAGNA

2 BY MS. CORNELL:

3 Q Mr. Compagna, were you in the courtroom during the
4 testimony of Christopher Ferraro earlier today?

5 THE COURT: Yeah. He was sitting here. Go ahead.

6 THE WITNESS: Yes.

7 BY MS. CORNELL:

8 Q Was there anything that he said that was inaccurate, to
9 the best of your knowledge?

10 A No. (indiscernible) reviewed all of the
11 (indiscernible).

12 Q When will the Debtors, on a consolidated basis, need an
13 infusion of liquidity?

14 A I think that's -- I believe that's the end of the first
15 quarter, the month of March.

16 Q Okay. What does an infusion of liquidity mean to you?

17 A The company needs to raise additional funds to continue
18 paying the administrative (indiscernible) as well as the
19 operation of the counsel in the case.

20 Q Will any of the individual Debtors not, on a
21 consolidated basis, require an infusion of liquidity prior
22 to March 2023?

23 A Yes. I believe so.

24 Q Which Debtors are those?

25 A The mining entities. I believe the mining entities

1 could use an infusion of liquidity late February timeframe.
2 Early March or the close -- yeah, I think they may be one
3 month earlier in February.

4 Q So on a consolidated basis, they won't need money until
5 March. But the mining business will need money sooner.
6 Will the proceeds from the sale of stablecoin today go to
7 fund the mining business?

8 A The proceeds from the sale of stablecoin will go to the
9 non-mining Debtors. From there, any further movement would
10 require either a loan facility, debtor-in-possession
11 financing from one -- from a parent to mining or something
12 along those lines. So we're not -- we haven't really
13 thought through that far at this point other than what I
14 just laid out (indiscernible) --

15 Q On either a consolidated basis or an individual Debtor
16 basis, are the projections you just provided taking into
17 account the forthcoming Prime Trust settlement?

18 A No. They're not.

19 Q What about the DeFi payments?

20 A I believe they do take into account the DeFi payments.

21 Q For the record, can you explain the DeFi payments and
22 what amount of liquidity that will bring into the estate?

23 A DeFi payments, the company had borrowings under certain
24 DeFi protocols and the collateral posted because those --
25 against those borrowings. So we pay off the loan, we get

1 the collateral back. The collateral is worth in excess of
2 the amount of the DeFi borrowing. So put it in the category
3 of good hygiene and especially in light of what we've seen
4 with some of the failures, we're just trying to bring all of
5 that collateral back to call it home, back to Fireblocks
6 where we can better safe keep it.

7 THE COURT: It's a net benefit to the Debtors to
8 pay off --

9 THE WITNESS: Yes.

10 THE COURT: -- the loans and get the collateral
11 back.

12 THE WITNESS: Correct. The collateral is in coin,
13 various coins. So they'll come back and be frozen. But
14 yes, overall value-wise the Debtor will be better off.

15 BY MS. CORNELL:

16 Q Do your projections take into account the proposed sale
17 of GK8?

18 A They do not.

19 Q Do you intend to create projections that include the
20 sale of GK8?

21 A That would be a pretty simple update, just dropping in
22 the net proceeds at the appropriate time. So we can
23 certainly -- we certainly would take that into account once
24 we have certainty on it and can do it at any time.

25 Q To the best of your knowledge, do the Debtors support

1 any non-Debtor entities' ongoing operations?

2 A Yes. There are certain non-Debtors part of the Celsius
3 organization that don't have operations but provide
4 services. Then there's the GK8 and (indiscernible) --

5 Q Where would we find that information?

6 A It's included in the cash flow projection.

7 THE COURT: Where would I find that? So the cash
8 flow projections -- you're talking about the Trustee's
9 Exhibit A that was just marked. You don't have a copy of
10 it?

11 MS. CORNELL: I can give --

12 THE COURT: Why don't you give him a copy, if you
13 would.

14 MS. CORNELL: May I approach, Your Honor?

15 THE COURT: Yeah. Go ahead. Just as sort of
16 standing, you don't have to ask permission each time you
17 approach a witness.

18 MS. CORNELL: I'm not wearing my mask. I don't
19 want to --

20 THE COURT: You can just -- you can do it.

21 THE WITNESS: Your Honor, could I just ask for
22 clarification on what actually came in as Exhibit A?
23 Because there were two versions floating around.

24 THE COURT: I only know about one version.

25 THE WITNESS: Okay.

1 MS. CORNELL: It was dated November 15th.

2 THE WITNESS: It was dated November 15th. Okay.

3 Thank you.

4 THE COURT: It's three pages long.

5 THE WITNESS: Okay. Got it. Thank you.

6 THE COURT: You have that, Mr. Compagna?

7 THE WITNESS: I do, yes. And just to be clear, it
8 starts the first week is October (indiscernible) --

9 THE COURT: Yes. Go ahead. Ask your question
10 again.

11 MS. CORNELL: Sure.

12 BY MS. CORNELL:

13 Q What I'm looking to find on this is where payment to
14 non-Debtor entities would be disclosed.

15 A Okay. So we do have a more detailed version of this
16 with many more line items which would have this spelled out
17 very specifically. I believe it's rolling up into the other
18 operating disbursements line in this presentation here.

19 THE COURT: It's the third line under operating
20 disbursements?

21 THE WITNESS: Correct.

22 BY MS. CORNELL:

23 Q On that third line of other operating disbursements, it
24 looks as though come the end of December 2022, there'll be a
25 change. Can you explain the change from 1501 to 936 and

1 then subsequently lower and lower in the first quarter of
2 2023?

3 A I would really need to see the detailed sheet that
4 builds up to these numbers.

5 Q Sure. That hasn't been provided to my office. Okay.

6 THE COURT: Well, when you say there's been a
7 change, but if you look at the 4 November and 11 November
8 (indiscernible) mostly below -- so I'm not quite sure of
9 your point, Ms. Cornell, because for each of the periods,
10 the amount of other operating disbursements varies.

11 MS. CORNELL: In particular I was curious about
12 the change from December, which is 1,500, where it goes into
13 the first quarter in 350. That seems like a dramatic
14 change.

15 THE COURT: It's in millions. But anyway -- or
16 thousands.

17 THE WITNESS: Thousands.

18 MS. CORNELL: Thousands.

19 THE COURT: Thousands.

20 MS. CORNELL: Yes. I know.

21 THE WITNESS: Yeah. Well that other operating
22 disbursements line, I know when you're looking in the
23 December weeks (indiscernible) insurance payments related to
24 the mining business and some back taxes owed by the platform
25 business. so that's why December is elevated and it likely

1 also includes, like I mentioned, the funding to the Israeli
2 and GK8 entities and I think we have those tailing off
3 (indiscernible) --

4 BY MS. CORNELL:

5 Q To the best of your knowledge, would the sale of
6 stablecoin impact the potential in-kind distribution to
7 creditors in this case?

8 A I don't think we're at the point of fully -- having
9 fully laid out our thoughts as far as what in-kind
10 distribution looks like, whether it's coin by coin or
11 distribution of crypto in general. The company is short on
12 many types of coin versus the deposits that were provided.
13 So this selling stablecoin obviously means we do have less
14 of those coins available to distribute.

15 But it is (indiscernible) as Mr. Ferraro had mentioned.
16 You can always -- whether you borrow 18 million in some
17 other fashion and need to repay that loan by selling
18 something, coin, other assets, plus value to distribute. To
19 the extent we sell the coin now and have excess cash, we can
20 always rebuy the stablecoin later. In fact that's one of
21 the reasons we're proposing to sell stablecoin in the first
22 instance is because it's just that, meant to be stable and
23 pegged to the U.S. dollar.

24 So you can trade it today, trade it tomorrow and it
25 should be 18 million for 18 million as opposed to trading

1 bitcoin today and suddenly having it double in value and
2 it's costly to replace it, if you will.

3 Q So based on your testimony just ow, if you were to sell
4 it in February or March, it would still be 18 million for 18
5 million. Is that correct?

6 A That's correct.

7 Q Okay. Have you done a liquidation analysis in this
8 case?

9 A We have not.

10 Q Has anyone at Alvarez & Marsal done a liquidation
11 analysis in this case yet?

12 A No. Not at this point.

13 Q Have you performed an analysis on the expense to file a
14 plan?

15 A Not specifically, no. You mean just the cost of the --
16 I'm not sure I follow.

17 Q The reorganization costs for filing a plan in this
18 case.

19 A The restructuring activities line includes the
20 professional fees largely that would be required to do that.
21 The projections you see here go through January. We have
22 these on a monthly basis through March at this point. So
23 there is some component of the professional fees that would
24 be related to getting the funding together and running the
25 plan process.

1 Q If the Debtors do not sell stablecoin today, in your
2 opinion, to what detriment will the Debtors be in if they
3 were to do it in March instead?

4 A The Debtors are incurring administrative costs that
5 they'd be in a position of not having adequate liquidity to
6 cover. Looking forward, they'd have to take actions to
7 curtail those costs or potentially administratively
8 insolvent the case. So it just comes down to at what point
9 do the Debtors have to take actions to avoid or minimize
10 that potential administrative insolvency (indiscernible) --

11 THE COURT: Mr. Compagna, assuming that the Court
12 grants the authority to sell 18 million in stablecoin, is it
13 the Debtors' plan to sell it all now or use that authority
14 to sell it as and when needed since essentially it remains
15 stable?

16 THE WITNESS: I think we would intend to sell it
17 now to put the cash balance sheet. But, you know, it's a
18 fair point (indiscernible) --

19 MS. CORNELL: Just one minute.

20 BY MS. CORNELL:

21 Q Mr. Ferraro testified it earlier that he estimated the
22 professional burn rate in these cases to be approximately
23 \$15 to \$20 million. And you're looking to sell
24 approximately \$18 million worth of stablecoin. If you were
25 to sell and maintain the proceeds of that \$18 million, would

1 that just go --

2 THE COURT: I think he estimated \$15 to \$20
3 million per month.

4 BY MS. CORNELL:

5 Q Per month. Would the sale of stablecoin -- how much
6 runway would the sale of stablecoin provide you?

7 A I think there's a lot in there. I agree that the
8 professional fee burn rate is about \$15 to \$20 million per
9 month. Operationally, the platform business has done a
10 really good job of managing liquidity. It's the case to
11 date they've largely been able to break even. The mining
12 business operationally has been break even to modestly
13 positive. It's the capital costs. It's largely the capital
14 costs and the professional fees that are leading to the cash
15 burn, the capital costs on the mining side and professional
16 fees for everything.

17 So, based on the professional fee burn rate, it's about
18 one month of additional liquidity runway and I presume
19 (indiscernible) through the capital spending on the mining
20 side of the business, which we should be by the time we get
21 to March. So one way of saying it, I tend to agree that \$18
22 million buys about one month of additional runway here.

23 Q So come April, will you be looking to sell more
24 stablecoin?

25 A It depends. Well, first, I don't think there'd be --

1 THE COURT: They don't have anything to sell.

2 THE WITNESS: The only way we'd be looking to sell
3 more stablecoin is if -- the only way we could sell more
4 stablecoin is if something happens with respect to the
5 custody and withhold motions later this week. But yeah, as
6 we forecast it here, there's no more stablecoin to sell. We
7 also have the potential proceeds coming out of GK8 that
8 could bolster liquidity. So we're looking at lots of paths
9 that bolster liquidity.

10 MS. CORNELL: Okay. Thank you. That's it.

11 THE COURT: Thank you, Ms. Cornell. Anybody else
12 wish to cross-examine? Any redirect?

13 MR. WALLACE: No redirect, Your Honor.

14 THE COURT: Thank you very much, Mr. Compagna.
15 You're excused.

16 MR. WALLACE: Your Honor, I'm going to hand things
17 off to my colleague, Grace Brier.

18 THE COURT: Okay.

19 MS. BRIER: Good morning, Your Honor. Grace
20 Brier, Kirkland & Ellis, on behalf of the Debtors. At this
21 time, Debtors call Mr. Oren Blonstein to the stand.

22 THE COURT: Thank you. Mr. Blonstein, come on up.
23 If you would raise your right hand and be sworn.

24 CLERK: Do you solemnly swear or affirm that the
25 testimony you're about to give the Court will be the truth,

1 the whole truth and nothing but the truth?

2 MR. BLONSTEIN: I do.

3 THE COURT: Please have a seat.

4 DIRECT EXAMINATION OF OREN BLONSTEIN

5 BY MS. BRIER:

6 Q Please introduce yourself to the Court.

7 A Hi. My name is Oren Blonstein.

8 Q And Oren, can you tell the Court a bit about yourself?

9 A Sure. I'm the head of innovation and chief compliance
10 officer for Celsius Network.

11 Q How long have you been at Celsius?

12 A I joined the company in February 2021.

13 Q And can you talk us through the roles that you've had
14 since you've been at Celsius?

15 A Sure. When I was hired, I started as head of
16 innovation, which was largely around formulating the
17 strategies for releasing new products for the company. In
18 September of 2021, I was appointed that the chief compliance
19 officer.

20 Q And before joining Celsius, what's your professional
21 background?

22 A I spent a little bit over a decade working for a
23 traditional financial services provider. The company was a
24 regulated FINRA broker-dealer. We had international
25 businesses that were -- operated ETSS and dark pools and

1 things like that. In 2016, I started working part-time in
2 crypto at that same traditional financial services firm.
3 And since 2019, I've been full-time in crypto.

4 Q And how did you first become involved with Celsius?

5 A So in the fall of 2019, I started to become personally
6 active in decentralized finance, playing around with the
7 different decentralized finance protocols, just trying to
8 understand them, learn them.

9 In late 2019, my wife and I had our first child. Time
10 got very precious, and I didn't have enough time to really
11 manage those activities anymore. Earlier in 2019, when I
12 was at (indiscernible) US, we had that literal water cooler
13 moment where a bunch of employees were standing around
14 talking about what we do with our crypto. And an employee,
15 one of my colleagues mentioned Celsius, and in the spring of
16 2020, I became a customer.

17 Q So you were a customer before or after you joined
18 Celsius as an employee?

19 A I was a customer before. And with the -- the concept
20 to finish that last thought was that not having enough time
21 to manage the DeFi stuff that I was using to generate yield
22 on my crypto, Celsius looks like a simpler alternative, a
23 way for me to save time.

24 Q Why did Celsius look like a simpler way to save time in
25 that space when you were a customer?

1 A It's very complicated to manage your own crypto,
2 especially using decentralized finance. There's the wallets
3 that you use, software wallets, hardware wallets. There's
4 the actual transactions of interfacing with the different
5 protocols approving the transactions. It's very costly to
6 do that as an individual. And then in general, there's also
7 like a tax consequence.

8 So every time you're making a transaction in
9 decentralized finance, that's basically a tax flow that
10 could be a taxable transaction. And so for me, instead of
11 having to manage all of those different things, I could
12 transfer my coins to the company and earn a lower rate than
13 if I managed it myself, but a very competitive rate.

14 Q And how did you come to understand how those tax
15 consequences would work when you were a customer of Celsius?

16 A The only tax consequences as a customer of Celsius that
17 I was aware of was paying tax on the interest that I earned
18 for the yields, the rewards that I earned from Celsius.

19 Q And did you review the terms of use when you were a
20 customer to help understand that concept?

21 A I did. Because a lot of my experience in general has
22 been around product development, one of the things,
23 especially in consumers reporting to financial services that
24 you do to try to understand a company is you can look at
25 their website and that will tell you how they're marketing

1 the service. But if you click on the terms of use, you can
2 see what kind of licenses they hold, what partners they work
3 with, how the service is actually delivered, what your
4 agreement with the company is. So I was used to kind of
5 clicking on those things, reading through them in detail to
6 understand them.

7 So by the time that I became a customer, I do remember
8 I certainly didn't scrutinize it the way I have the last few
9 weeks. But I do remember looking at it and thinking about
10 the fact that I was essentially giving control of my coins
11 away to the company, because up until that point, I had been
12 managing it myself. But again, with thinking about the
13 time, thinking about the resources, the tax implications, I
14 made the decision to transfer my coins to the company.

15 Q And at this time, I'd like to turn to the substantive
16 testimony that you're going to offer here today.

17 MS. BRIER: Your Honor, may I approach the witness
18 with his declarations?

19 THE COURT: Certainly.

20 BY MS. BRIER:

21 Q Mr. Blonstein, what have I just handed you?

22 A So one of the documents is my original declaration on
23 the terms of use and the ownership of Earn assets and the
24 sale of stablecoin. That's my first declaration. And then
25 the second one is the supplemental declaration that goes

1 into more details on the acceptance of terms of use from
2 Version 6 and on.

3 Q Okay. So taking those one at a time, I'd like to talk
4 first about your original declaration, which was Docket
5 Number 1327. Do you have that one in front of you?

6 A I do.

7 Q And is that your signature at the end of the substance
8 of your declaration on Page 9?

9 A Yes. This is my electronic signature.

10 Q And does this exhibit include the exhibits that were
11 attached to your original declaration when it was filed in
12 November 2022?

13 A Yes. It does.

14 Q And is the testimony contained within your declaration
15 true and accurate, to the best of your knowledge?

16 A It is.

17 Q Do you adopt this document, Exhibit Document Number
18 1327, as your affirmative testimony under oath today?

19 A I do.

20 Q Okay. Let's turn to your supplemental declaration,
21 Docket Number 1584. Is this a true and accurate copy of the
22 declaration that you signed and submitted on December 2,
23 2022?

24 A It is.

25 Q Is that your signature on Page 9 of that document?

1 A Same electronic signature.

2 Q And is the testimony contained in your supplemental
3 declaration, Docket 1584, true and accurate to the best of
4 your knowledge?

5 A It is.

6 Q Do you adopt the testimony within your supplemental
7 declaration as your testimony under oath today?

8 A I do.

9 MS. BRIER: Your Honor, at this time, we'd move
10 into evidence Docket Number 1327 and Docket Number 1584.

11 THE COURT: Are there any objections to either
12 declaration? Hearing none, both are admitted into evidence.

13 MS. BRIER: And Your honor, just for purposes of
14 the record to be clear, I'd also like to admit all of the
15 exhibits contained therein to his declaration into evidence
16 as well.

17 THE COURT: All right. Let's take the first one
18 first. The first declaration, ECF 1327, has a group of
19 exhibits attached. They're in the bound copy of it. They
20 are all part of that same ECF docket number. Are there any
21 objections to the exhibits that are attached to Mr.
22 Blonstein's first declaration? All right. Hearing none,
23 those are in evidence. And again, with respect to the
24 second declaration, they're part of the same ECF docket
25 number. Are there any objections to the exhibits to Mr.

1 Blonstein's declaration? Hearing none, there in evidence as
2 well.

3 MS. BRIER: Thank you. And I'd like to approach
4 the witness with one more exhibit.

5 THE COURT: Yeah.

6 MS. BRIER: It's a big binder. I have an extra
7 one that I can bring up as well.

8 THE COURT: I've got a lot of binders up here. Do
9 I have -- do I have that yet?

10 MS. BRIER: You actually do not. So I will bring
11 this one up.

12 THE COURT: Okay.

13 MS. BRIER: Sorry. Thank you.

14 BY MS. BRIER:

15 Q Mr. Blonstein, is what I just handed you Exhibits A-1
16 through A-8 and redlines from Exhibits A-1 through A-8 that
17 were attached to Mashinsky declaration?

18 A Yes.

19 THE COURT: I'm sorry. They were attached to
20 what? Mashinsky's declaration?

21 MS. BRIER: They were.

22 THE COURT: Yeah. Okay.

23 BY MS. BRIER:

24 Q And Mr. Blonstein, are these the same exhibits that you
25 described reviewing in your declaration, your original

1 declaration on Page 3, Paragraphs 4 through 11?

2 A Yeah. I mean, without checking all the pages, but
3 yeah, it appears. Yes.

4 MS. BRIER: And Your Honor, we'd --

5 THE COURT: Let me -- just so I understand, I had
6 entered an order early in the case requiring the Debtors to
7 file on ECF each version of the terms of use that were in
8 effect -- I don't remember what the earliest date I used.
9 But in response to that order, the Mashinsky declaration,
10 ECF Document Number 393 was filed that attached what was
11 described as each version of the terms of use. Is that what
12 you put before me? Not the Mashinsky declaration, but the
13 exhibits that were attached to that Mashinsky declaration?

14 MS. BRIER: That's exactly right, Your Honor.
15 They're the exhibits that were attached to the Mashinsky
16 declaration that Mr. Blonstein reviewed as part of his own
17 declaration process.

18 THE COURT: is that correct, Mr. Blonstein? You
19 reviewed these exhibits, A-1 through A-8, that had the
20 different versions of the terms of use? Is that correct?

21 THE WITNESS: I did.

22 THE COURT: Okay.

23 MS. BRIER: And Your Honor, at this time, we'd
24 move to admit these exhibits into evidence.

25 THE COURT: Well, when you say you're moving to

1 admit in evidence ECF Docket Number 393, Exhibits A-1
2 through A-8, which are pages within the ECF docket number,
3 they're Pages 14 through 679.

4 MS. BRIER: That's exactly right, Your Honor.

5 THE COURT: The actual attachments to the
6 Mashinsky declaration went through Page 1126.

7 MS. BRIER: Yes.

8 THE COURT: What was 680 through 1126?

9 MS. BRIER: They were other documents, Your Honor,
10 that Mr. Blonstein did not review as part of his declaration
11 process. So there were other types of terms of use that
12 were included there that are not the original terms of use,
13 A-1 through A-8, that are included in this excerpt from his
14 declaration.

15 THE COURT: I mean, I can open it and look. But
16 are you able to describe to me generally what Pages 680 to
17 1126, what exhibits those comprised?

18 MS. BRIER: So some of those are versions of the
19 terms of use folks would have signed if they signed up for a
20 different program or a different part of the process. The
21 ones that we're submitting are just the standard terms of
22 use that every customer had to sign before they signed up
23 for the platform.

24 THE COURT: And you're offering these in evidence?

25 MS. BRIER: Yes, Your Honor.

1 THE COURT: Are there any objections?

2 MS. CORNELL: Your Honor, I'm sorry. This is
3 Shara Cornell, again, on behalf of the Office of the United
4 States Trustee. I don't have a copy. Are they looking at
5 the evidence the Mashinsky declaration or the attachments?

6 THE COURT: The attachments. And then, just to be
7 clear, it's not all of the attachments to the Mashinsky
8 Declaration. As I pointed out, these exhibits that they're
9 offering are Pages 14 through 679. The actual attachments
10 to the Mashinsky declaration went through Page 1126.

11 MS. CORNELL: But the declaration itself is not
12 included in there?

13 THE COURT: The declaration is not itself there.

14 MS. BRIER: That's correct.

15 MS. CORNELL: Okay. Thank you. Then no
16 objection, Your Honor.

17 THE COURT: All right. Then the Court is
18 admitting into evidence the -- in a binder, it's ECF Docket
19 Number 393, Pages 14 through 679 of that ECF filing. Okay.
20 That's admitted into evidence.

21 MS. BRIER: And Your Honor, at this time, with Mr.
22 Blonstein's affirmative testimony that's accepted and
23 adopted under oath, I'm happy to pass a witness, or I can
24 put some affirmative testimony into the record now or on
25 redirect, whenever Your Honor would prefer.

1 THE COURT: Well, what is it that you want? I
2 mean, his two declarations are in evidence. Is there
3 anything beyond that? You've asked about his background and
4 that's all in. Is there something else you wanted to cover
5 now?

6 MS. BRIER: Your Honor, I'm happy to cover any of
7 it on redirect as necessary.

8 THE COURT: Okay. All right. I do have a couple
9 of questions before cross-examination. What is your
10 background in compliance?

11 THE WITNESS: So most of my professional career
12 was around product development operations, general
13 management. The company that I've worked for, for 12 years,
14 the traditional financial services provider, like I said,
15 was a regulated broker-dealer. So we underwent audits and
16 examinations by different regulators.

17 Prior to working full-time in cryptocurrency, that
18 was kind of the extent of me touching regulations or
19 compliance. When in 2019, when I started working full-time
20 in cryptocurrency, I became the CEO of an exchange, a
21 cryptocurrency exchange. And how I explain this is that as
22 I was signing the documents to become the CEO and control
23 person of the company --

24 THE COURT: It helps to know what it's about.

25 THE WITNESS: Exactly. So that was exactly my

1 thought process is although I had -- I was learning very
2 quickly what it meant to be a counterparty to trades in
3 cryptocurrency and the rules that applied, I felt like I did
4 not have sufficient knowledge at that time. So I hired a
5 compliance advisory that I basically spent the next six
6 months or so getting up to speed, very rapid, I would say
7 very rapidly. In that timeframe, from around mid-June '21,
8 I did a couple of things which I think really --

9 THE COURT: Well, I wrote down a note that you
10 became chief compliance officer in February 2021. Is that
11 correct?

12 THE WITNESS: February 2021 was when I was hired
13 for Celsius.

14 THE COURT: Okay.

15 THE WITNESS: September 2021 was when I became the
16 interim -- the chief compliance officer. What I was just
17 talking about before was I became the CEO and interim chief
18 compliance officer for that other cryptocurrency exchange.

19 THE COURT: Who was the chief compliance officer
20 for Celsius before you became the chief compliance officer?

21 THE WITNESS: A gentleman named Jeremie Beaudry.
22 He was the general counsel and chief compliance officer.

23 THE COURT: Is he still with the company?

24 THE WITNESS: No.

25 THE COURT: Did he leave the company when you

1 became the chief compliance officer?

2 THE WITNESS: He was in the process of -- I think
3 he was actually gone by the time I became the chief
4 compliance officer. I knew enough about compliance
5 obligations under the Bank Secrecy Act to --

6 THE COURT: Tell me what your responsibilities are
7 as chief compliance officer of Celsius.

8 THE WITNESS: Our primary regulator is FinCEN, the
9 Financial Crimes Enforcement Network, Department of the
10 Treasury. We're required as a (indiscernible) to comply
11 with the Bank Secrecy Act, and also OFAC sanctions laws
12 generally. I saw that as my primary obligation to make sure
13 that the company was in full compliance there.

14 And that's what I spent the vast majority of my
15 time. And I can appreciate -- I mentioned this in my
16 deposition, that a lot of people might say chief compliance
17 officer should be responsible for a lot of different things.
18 That's not what I was doing in that role. And then that was
19 clear to my managers and I'd say throughout the firm that I
20 wasn't covering other areas that some chief compliance
21 officers might --

22 THE COURT: Tell me again what were the areas that
23 you were covering as chief -- well, still are, as chief
24 compliance officer and if they've changed since September
25 2021, tell me that.

1 THE WITNESS: All aspects of compliance with the
2 Bank Secrecy Act as a mining services business. So that
3 meant making sure that we have the SAML program, that we had
4 a team that was adequately staffed. When I joined -- or I
5 ended up tripling the size of the team when I joined, just
6 based on the workload that we have, making sure that we have
7 the right -- so customer identification program, VSAML,
8 training program for our staff, making sure that we're in
9 compliance with the Bank Secrecy Act reporting, the account
10 sanctions reporting that we need to do, that we need to do.
11 Responding to regulators like FinCEN. We had a Title 31
12 exam. We had an OFAC exam.

13 So those are kind of the -- there's a tremendous
14 amount of work that goes into making sure that the
15 technology infrastructure to support the compliance
16 operations is working properly, and obviously lots of checks
17 that the actual procedures and policies that we have in
18 place are being carried out.

19 THE COURT: Have you read the examiner's interim
20 report?

21 THE WITNESS: I read parts of it.

22 THE COURT: So one of the issues that the
23 examiner's interim report raises and certainly may be
24 relevant to the custody and withhold during later this week,
25 it is Celsius's recordkeeping with respect to the movement

1 of coins into custody, whether it was a shortfall or what --
2 was that an area of your responsibility?

3 THE WITNESS: It was definitely not. So the
4 movement of coins was absolutely not an area. That's not
5 something that the bank -- you know, movements of money
6 inside the company generally were not something that I was
7 supervising at all. I'm aware of it. I have a little bit
8 more exposure to the custody project because of my role in
9 innovation, because custody was kind of a starting point for
10 a lot of the new products and services we were planning on
11 offering.

12 But yeah, I remember the section, I think, that
13 you might be referring to where it was kind of stated as a
14 surprise. How could the chief compliance officer not be
15 aware of the amounts of money between accounts inside the
16 company? And I would say, I mean, how many job descriptions
17 of the chief compliance officer has that person as the
18 examiner written, right? I mean, I've written several as
19 CEO to companies, and I've performed the job function.

20 I don't know many CCOs who supervise coin
21 movements between accounts internally at the company.
22 There's a treasurer for that. There's a finance department.
23 There are other people. So I didn't agree with that
24 conclusion or their assertion.

25 THE COURT: You didn't agree that Celsius -- you

1 believe Celsius did keep accurate track of the movement of
2 coins?

3 THE WITNESS: No, I didn't -- I didn't agree.

4 THE COURT: When you say you disagree, you're not
5 disagreeing with her conclusion that Celsius did not keep
6 accurate track of the movement of coins.

7 THE WITNESS: One hundred percent, I agree with
8 that --

9 THE COURT: Okay. All right.

10 THE WITNESS: I disagree with the assertion that I
11 had some obligation there.

12 THE COURT: Okay. All right. Cross-examination?
13 You're excused. Thank you very much.

14 MS. MILLIGAN: Your Honor, this is Layla Milligan.
15 May I ask the witness a few questions?

16 THE COURT: Oh, yes.

17 MS. MILLIGAN: I apologize. I was waiting for Ms.
18 Cornell to stand up.

19 THE COURT: That's fine.

20 MS. MILLIGAN: I just --

21 THE COURT: So introduce yourself, Ms. Milligan,
22 so that Mr. Blonstein knows -- he may know who you are
23 already. I don't know. Maybe you questioned during his
24 deposition. But go ahead.

25 MS. MILLIGAN: Thank you, Your Honor. Layla

1 Milligan, with the Texas Attorney General's Office,
2 appearing on behalf of the Texas State Securities Board and
3 the Texas Department of Banking.

4 CROSS-EXAMINATION OF OREN BLONSTEIN

5 BY MS. MILLIGAN:

6 Q Good morning, Mr. Blonstein.

7 A Nice to meet you.

8 Q I have a few just follow-up questions. You are not a
9 licensed attorney. Is that correct?

10 A That is correct.

11 Q Did you personally play any role in the drafting of any
12 of the versions of terms of use?

13 A I did not personally play a role in any of the terms of
14 use.

15 Q Did you -- I'm sorry to interrupt.

16 A Yeah. I was going to say there may be cases where I
17 provided input on certain sections not as the chief
18 compliance officer, but as the head of innovation. For
19 example, we launched two new products, two products from the
20 innovation and product team. One was the swap product. One
21 was the buy coins product.

22 For those products, I was consulted about terms of use,
23 mostly in terms of flow funds and things like that, but not
24 in my compliance capacity. And I wasn't answering any
25 questions. Nobody was coming to me with questions about

1 legal or regulatory questions. It was more to understand
2 the product and service offering.

3 Q Okay. So just to be clear, regarding the swap
4 transactions or projects that you just mentioned, people
5 were coming to you about the terms of use, but not for
6 compliance or regulatory role, but just for information
7 about the product. Is that what you just said?

8 A That's correct. Yeah. In those two cases. And we
9 were in the process of doing something similar for the
10 credit card that we were planning to launch.

11 Q Did you have any or play any personal role in obtaining
12 customer consents to the terms of use in effect at different
13 times?

14 A I didn't -- sorry, I did not.

15 Q It is your understanding that the company has the
16 ability to track which terms of use individual or industrial
17 consumers, participants signed or clicked agree to?

18 A Yes. We have software that was internally developed
19 called Back Office. We call it internally our Back Office
20 system. That system tracks essentially all user activity,
21 all customer activity on the platform, including the
22 acceptance of the terms of use.

23 Q Has that information been produced to any party in this
24 case?

25 A My understanding is yes. It was in my original

1 declaration. We provided (indiscernible) information in an
2 aggregate form and some of the tables in my original
3 declaration. So we showed --

4 THE COURT: Hold on. Anybody who is connected
5 over Zoom, other than Ms. Milligan, needs to mute their line
6 so as not to interrupt the hearing. Go ahead, Ms. Milligan.

7 MS. MILLIGAN: Thank you, Your Honor.

8 BY MS. MILLIGAN:

9 Q Is it your testimony, Mr. Blonstein, that the
10 documentation of which terms of use the individual investors
11 clicked, that information, not in aggregate form, but the
12 specific information for each investor and the terms of use
13 they clicked or assented to has been produced to any party
14 in this case?

15 A I'm not aware. If that has been provided, I'm not
16 aware of it. I may be missing it. I may have missed that
17 detail. But I know about the aggregated summaries, and I've
18 seen the data firsthand myself, the underlying data.

19 Q Did you play any role in gathering that data
20 personally?

21 A I worked with the data team. I mean, I was on the
22 email threads. I did work with the data team on it. There
23 were other individuals that were also working with the data
24 team to request this information. So subsequently I talked
25 to them about how they gathered it to get an understanding

1 of, like, the queries that they wrote to extract the data,
2 just to make sure that what they gathered would line up with
3 me, with my understanding of how they would get that
4 information.

5 Q Okay. So you worked with a team of individuals who
6 actually gathered the data, and you got the information from
7 them. You didn't personally play a role in the gathering of
8 that data.

9 A That's correct. Yeah. (indiscernible) like SQL
10 queries.

11 Q Okay. In your role as chief compliance officer, to
12 your knowledge, at any point was Celsius in compliance with
13 state or federal securities law?

14 A That was not my area. So, I mean, like I was
15 mentioning just before, I focused on our obligations as a
16 money services business, and the serious matters were not in
17 my wheelhouse.

18 Q To your knowledge, as chief compliance officer, was
19 Celsius at any point in compliance with state or federal
20 money transmissions laws?

21 A This was -- I mean, this was definitely discussed with
22 counsel. So I'm not sure if --

23 Q I'm not asking for your -- I'm not asking, just to
24 clarify, your communications with counsel. I'm asking for
25 your understanding. To your knowledge, as chief compliance

1 officer, was the business ever in compliance with money
2 transmissions laws?

3 MS. BRIER: Your Honor, I'd caution the witness
4 that if his knowledge is based on discussions with counsel
5 or --

6 THE COURT: He can answer. The question did not
7 call for attorney-client privilege. He can answer the
8 question.

9 MS. BRIER: Thank you, Your Honor.

10 THE WITNESS: My understanding, based on
11 discussions, was that we were in compliance.

12 BY MS. MILLIGAN:

13 Q With money transmissions laws? Just to be clear.

14 A Yes.

15 Q Okay. But you are not aware of whether the company was
16 in compliance with state or federal securities laws?

17 A That's correct.

18 MS. MILLIGAN: Okay. Your Honor, I have no
19 further questions. Thank you.

20 THE COURT: Thank you. Ms. Milligan. Any other
21 cross-examination?

22 MS. CORDRY: Yes, Your Honor.

23 THE COURT: Yes. Ms. Cordry?

24 MS. CORDRY: Yes. Karen Cordry. I'm bankruptcy
25 counsel for the National Association of Attorneys General.

1 Thank you, Your Honor, for being able to appear this
2 morning.

3 CROSS-EXAMINATION OF OREN BLONSTEIN

4 BY MS. CORDRY:

5 Q I just have a few very short questions for you, Mr.
6 Blonstein, which I think are matters that I think I've
7 gathered from what you said, but I just really want to
8 clarify that these are correct.

9 First of all, you have introduced the various terms of
10 uses and that they were posted on the website. When they
11 were posted, were they posted just as a clean version, each
12 one a new, complete, clean version?

13 A To my knowledge, yes.

14 Q Okay. Was a blackline ever posted on the website at
15 the same time.

16 A Just to clarify? Blackline --

17 THE COURT: Showing the changes from --

18 BY MS. CORDRY:

19 Q One that shows the changes --

20 A Okay. I refer to those as redlines.

21 Q Okay. Redlines, blacklines, whatever color --

22 THE COURT: Well, you know, when you print them
23 out on a black and white printer, they look black. If you
24 look at them on a screen, they could be colored. But --

25 BY MS. CORDRY:

1 Q Whatever color they are, were there any ones that
2 showed the editing, an edited version that showed what
3 changes had been made?

4 A Not to my knowledge. I do know that on multiple
5 occasions of these updates, we tried to post some of the key
6 changes to the terms on the main screen that we presented to
7 users.

8 Q And those changes are part of the attachment to your
9 supplemental declaration, are they not? They're shown
10 there?

11 A That -- sorry. That's correct.

12 Q Did any of those actually point out to anybody that
13 changes were being made in the ownership, in the terms of
14 use relating to the ownership of those assets?

15 A I don't remember those being called out. Then I would
16 say that that's correct because from my perspective as a
17 customer, there's been no material change in the
18 relationship between the company and its customers as far as
19 the ownership of the assets that they sent to the company.

20 THE COURT: Let me -- I'm not sure I understand
21 your answer. Did the updated terms of use point out changes
22 with respect to ownership or title of crypto assets, yes or
23 no?

24 THE WITNESS: No. That was not called out.

25 THE COURT: Okay. Ms. Cordry, ask your next

1 question.

2 MS. CORDRY: Sure.

3 BY MS. CORDRY:

4 Q Were the prior versions left on the website if someone
5 wanted to compare between version six and version seven,
6 let's say.

7 A Not to my knowledge.

8 Q Okay. So if someone tries to actually determine what
9 changes have been made, they would have to try to remember
10 in their own head what the prior document said and then read
11 a 55-page document and try to figure out what changes were
12 made. Would that be fair to say?

13 A Yes. That is fair to say.

14 Q Okay. Was there ever any attempt to reconcile what was
15 being said in the terms of use, the written terms of use
16 document with what Mr. Mashinsky was saying on his
17 broadcasts?

18 A I was not involved in any kind of reconciliation of
19 those things. That was more matter for our in-house
20 counsel, what we call our legal and regulatory team.

21 Q Have they put any information into the record in this
22 case as to what Mr. Mashinsky was saying on those broadcasts
23 at the same time these terms of uses were being changed?

24 A We have so many requests from different parties about
25 related to the AMAs and other kind of marketing statements.

1 I'm not sure whether those are part of the Chapter 11, this
2 case, or just regulator inquiries. So I'm not sure.
3 Someone else may know about what's been submitted. I mean,
4 the things that I'm the most familiar with about this case
5 are my declarations.

6 Q Do you expect that every customer actually read the
7 entire terms of use every time they were changed?

8 A It's difficult for me -- it's difficult for me to guess
9 about that. As a customer, there are some services where
10 when it's a material -- when it's important, I make sure to
11 read it in the new terms of service. When I think it's less
12 important, I don't.

13 And so each user, each customer, each person has to
14 make that decision on their own. And so I'm not -- you
15 know, I would expect some customers -- some customers may
16 not have read it thoroughly. But what I can tell you is
17 that every single one of our customers checked that box that
18 said they agreed to the terms of use, and if they didn't, we
19 wouldn't have allowed them to use the services.

20 Q Right. So to be able to access their coins, they had
21 to check that box, whether or not they read all 55 pages or
22 not, correct?

23 A That's correct.

24 Q Did you read all 55 pages every time the terms of use
25 changed?

1 A Definitely not.

2 Q And you said you might read it if it was something
3 important changing. Would there be a way the customer would
4 know what was being changed and whether it would be of
5 importance to them or not?

6 A We called out -- in terms of the exhibits, you know,
7 show what we thought were the most consequential changes to
8 the terms of use.

9 Q Okay. So we can look at those changes, and those are
10 the only ones that a customer would be aware of as being
11 what you viewed as significant changes to the document, you
12 meaning Celsius.

13 A They could be -- so if your question is would they be
14 aware of the changes between the versions, yeah, I agree.
15 We called out what we thought was the most consequential
16 changes.

17 Q And I think in listening to your deposition, both
18 originally and in the supplemental deposition that was taken
19 last week, you were repeatedly asked to give your
20 interpretation of certain provisions of the terms of use.
21 Is that correct?

22 A Yes.

23 Q And would it be fair that you repeatedly said you're
24 not a lawyer, you didn't draft them, it's hard for you to
25 really be able to give a definitive interpretation?

1 A That's correct.

2 Q Is it also fair to say that these lay customers were in
3 the same position? They aren't lawyers. They didn't have
4 anything to do with drafting those documents.

5 A I mean, I'm sure we had some customers that were
6 lawyers. But yeah, generally I don't expect all of our
7 customers to be attorneys.

8 Q So if you had difficulty with deciding how to interpret
9 them, would you assume that those lay customers who were in
10 the same position or worse than you were would have also
11 difficulty in interpreting those terms of use?

12 A I think when you sign up for a service and you agree to
13 the terms of service, it's not really fair after the fact to
14 say, oh, I didn't read that, or I'm going to focus on this
15 part in terms of service versus another part. When you
16 click that box, you accept the terms of service and --

17 Q Yes. But my question is not did you read the whole
18 terms. My question is, having read them, if there was
19 difficulty in interpreting them, which you yourself said in
20 your deposition you had difficulties, would that not be
21 equally applicable to the customers having difficulties
22 understanding what those terms of use meant?

23 A I think if I said that verbatim, what I was trying to
24 convey was that -- was maybe one of two things. One was
25 that I may have had a difficult time understanding the point

1 the person was making or the question the person was asking.
2 The second thing is that it can be difficult to review just
3 different snippets from the terms of use versus viewing the
4 document in its entirety. So without review, when I'm asked
5 to review one sentence here, one sentence there, and then
6 construct some kind of overarching view on the terms of
7 views, I think that's challenging for anyone.

8 Q If in the same sentence it says, I'm loaning you my
9 assets and I'm also transferring my assets to you, would you
10 consider that a confusing sentence?

11 A No.

12 Q You don't consider that there's any confusion between
13 loaning somebody something and transferring it to them in
14 the sense that you all are asserting that this is a full
15 transfer of ownership?

16 A I mean, from my view, when I read those statements,
17 when I view the entirety of those statements and the
18 agreement, they seem to be in sync.

19 Q Why did Celsius continue to use the phrase that you are
20 loaning us the assets in numerous places throughout the
21 document, if, in fact, your position is that they were
22 transferring them to you in their totality?

23 A I wasn't involved in the drafting of that. So I don't
24 know what the basis for making that decision was.

25 Q So if a customer read over and over again that they

1 were loaning their documents, they would have no reason to
2 know also any more than you why then it would say that they
3 were transferring their assets?

4 A I'm sorry. Can you say that question again?

5 Q Okay. When you said you don't know why it continues to
6 say in the terms of use that they're loaning their assets to
7 Celsius. It says that on several occasions, does it not?

8 A I believe so.

9 Q Okay. And you don't know why it continues to say that,
10 even while you're now arguing that, in fact, there was a
11 full transfer of ownership, correct?

12 A I'm saying that there were attorneys that were --
13 multiple attorneys inside and outside the company that were
14 involved in drafting that. I relied on them to come up with
15 the reasoning for why that language was added. That wasn't
16 something -- I had a lot of other stuff on my plate. So
17 that wasn't something that I was trying to figure out.

18 Q If any of the borrowers were confused about these
19 written terms of use, do you think they would listen to Mr.
20 Mashinsky's broadcast to try to understand better what was
21 going on with their assets?

22 A That's reasonable.

23 Q So it would be reasonable to also look at what he said
24 in context with the terms of use to try to understand what
25 customers actually understood and appreciated when they were

1 making these transfers, correct?

2 A I agree. Although from personal experience, like, if
3 you're buying a car, you don't just listen to the salesman.
4 You know, you read the contract.

5 Q But I would hope the salesman would say something that
6 was consistent with the contract, would I not?

7 A Yeah. I would hope so too.

8 Q And I guess it's my last question here. You talked
9 about that one of the reasons you started investing with
10 Celsius was because you had to deal with various financial
11 tax consequences if you were making your own trades with
12 your investments. Is that correct?

13 A That's correct.

14 Q When you transferred your assets to Celsius under these
15 terms of use, was that a taxable event? Was that reported
16 to the IRS?

17 A So I do remember in the terms of use, there was a
18 section that talked about what the tax obligations were, and
19 it primarily revolved around reporting the interest paid to
20 me, not related to the transfer.

21 Q So in that respect, this would be different than if you
22 were selling these to a third party when you would have had
23 to make that kind of report to the IRS, correct?

24 A I'm not a tax expert, but I think you're right.

25 MS. CORDRY: Okay. All right. I have no further

1 questions.

2 THE COURT: Thank you very much, Ms. Cordry. Any
3 other cross-examination? Any redirect?

4 MR. HERRMANN: Yes. This is Immanuel Herrmann. I
5 can -- I have some brief questions.

6 THE COURT: Go ahead, Mr. Herrmann.

7 CROSS-EXAMINATION OF OREN BLONSTEIN:

8 BY MR. HERRMANN:

9 Q All right. So I just had a few follow-up brief
10 questions for you, Mr. Blonstein. One is that you joined as
11 a customer in the spring of 2020, correct?

12 A That's correct.

13 Q And at your first deposition, you said you reviewed the
14 initial terms of service at that time and that you were
15 giving up ownership, correct?

16 A Correct.

17 Q Until September 20th, the terms of service didn't
18 mention change of ownership. So I just wanted to confirm in
19 court that you read the terms of service, version four, when
20 you signed up and that you read it as giving up title to
21 your assets.

22 A I did. I mean, I can confirm that I did, and I believe
23 it is in version -- in both version one and two of the terms
24 of use that were in effect. I can go through and try to
25 find the relevant session if you'd like.

1 THE COURT: Just answer the questions.

2 THE WITNESS: Okay.

3 THE COURT: Go ahead, Mr. Herrmann.

4 BY MR. HERRMANN:

5 Q All right. Is Earn a security?

6 THE COURT: I'm sorry. I didn't understand your
7 question, Mr. Herrmann?

8 BY MR. HERRMANN:

9 Q Is Earn a security? Are Earn deposits a security? Are
10 they something resembling a trade or a purchase for a
11 security?

12 A I'm not an attorney. I've already explained my
13 background as chief compliance officer. That's not the area
14 that I focus on. That's not something I have any kind of
15 specific knowledge of. So I'm not in a position to answer
16 that question.

17 Q Okay. When somebody takes out a loan, what are they
18 borrowing against?

19 THE COURT: Mr. Herrmann?

20 MR. HERRMANN: Yes?

21 THE COURT: Confine your cross-examination to the
22 direct testimony that Mr. Blonstein has given.

23 MR. HERRMANN: All right. I think he did in the
24 depositions, but I can move on.

25 THE COURT: Well, this is an evidentiary hearing

1 in court. Your cross-examination ought to be limited. I'm
2 going to limit it. Go ahead.

3 MR. HERRMANN: All right. I think that basically
4 was my questions then.

5 THE COURT: Thank you very much, Mr. Herrmann.
6 Anybody else wish to have any cross-examination?

7 MR. FRISHBERG: Yes, Your Honor. Daniel
8 Frishberg.

9 THE COURT: Mr. Frishberg, go ahead.

10 CROSS-EXAMINATION OF OREN BLONSTEIN

11 BY MR. FRISHBERG:

12 Q In your deposition on Friday, you stated that you were
13 aware of postposition transfers by Celsius to outside
14 parties, such as DeFi to pay off loans. The transfers that
15 were conducted on, I believe, July 10th were roughly
16 \$160,000,000. Did the funds ever return to Celsius?
17 Because blockchain data shows that they did not.

18 MS. BRIER: Objection, Your Honor. This is
19 outside the scope of --

20 THE COURT: Sustained. Confine your questioning
21 to the scope of the direct examination. This is not a
22 deposition.

23 MR. FRISHBERG: Thank you. I have no further
24 questions.

25 THE COURT: All right. Thank you. Anybody else

1 have any cross-examination?

2 MR. DEGIROLAMO: Yes, Your Honor. Tony
3 DeGirolamo.

4 THE COURT: Go ahead.

5 MR. DEGIROLAMO: Thank you. On behalf of
6 customer, Eric Wohlwend.

7 CROSS-EXAMINATION OF OREN BLONSTEIN

8 BY MR. DEGIROLAMO:

9 Q Mr. Blonstein, do you recall testifying on direct that
10 when you were a customer of Celsius, that you believed you
11 were giving control of your digital assets to Celsius? Do
12 you recall that testimony?

13 A I do.

14 Q Okay. And do you also recall in your testimony to
15 cross-examination with Attorney Cordry that you felt that
16 there was no change in the relationship between yourself as
17 a customer of Celsius and Celsius with respect to your
18 digital assets?

19 A No material change from my perspective as a customer.
20 That's right.

21 Q Okay. At no time in your testimony did you say you
22 actually conveyed your ownership of digital assets to
23 Celsius. And so my question is, what do you actually
24 believe? Do you believe that you were merely giving control
25 of your digital assets as you testified, or do you believe

1 you actually gave title of your digital assets to Celsius?

2 Because you're testifying both ways.

3 A Yeah. I thought that -- again, I may be using

4 imprecise terminology and I know --

5 THE COURT: Just answer the question. Go ahead.

6 THE WITNESS: I believe I transferred ownership.

7 I think I actually -- in the deposition, I mentioned

8 transferred title.

9 BY MR. DEGIROLAMO:

10 Q Well, I'm not interested in -- I'm not interested in

11 your --

12 THE COURT: Don't interrupt him. He's in the
13 middle of answering your question. Do not interrupt him.

14 MR. DEGIROLAMO: Thank you, Your Honor.

15 THE WITNESS: So yeah, if I said control, what I
16 mean by that is I'm giving my coins to the company. That
17 was the consequential decision that I made as a customer
18 before being an employee. And it was a consequence. It was
19 consequential. I mean, I thought hard about it because
20 prior to that point, I held the keys to my crypto myself.

21 MR. DEGIROLAMO: Nothing further, Your Honor.

22 Thank you.

23 THE COURT: Thank you very much. Any further
24 cross-examination? Any redirect?

25 MS. BRIER: Briefly, Your Honor.

1 THE COURT: Go ahead. When you start, state your
2 name for the record again so we have a clear --

3 MS. BRIER: Thank you, Your Honor. Grace Brier,
4 Kirkland & Ellis, on behalf of the Debtors.

5 THE COURT: Go ahead.

6 REDIRECT EXAMINATION OF OREN BLONSTEIN

7 BY MS. BRIER:

8 Q Mr. Blonstein, you were asked some questions on cross-
9 examination about whether Celsius identified in its
10 communications to customers changes to ownership based on
11 changes to the terms of use. Do you recall those questions?

12 A Yes.

13 Q And did Celsius communicate the changes to ownership,
14 any changes to ownership in its communications to customers
15 about changes to the terms of use?

16 A Yeah. You're right. That is a good -- or I understand
17 the idea that -- so the terms of use, version eight,
18 included a release of our custody feature, which we clearly
19 -- where we clearly described the customers retaining
20 ownership of their assets that they send to the company.
21 Also, terms of use, version six and seven, talked about the
22 transfer of -- the transfer and the customer relationship
23 from Celsius Network Limited, the UK company, to the Celsius
24 Network LLC, the U.S. company. So there's a change of --
25 and also there's text there that says including change of

1 ownership to the U.S. company.

2 Q And as it relates to the ownership of the assets that
3 users were committing to the Earn program, were there any
4 substantial changes to those terms of use across version
5 six, seven or eight?

6 A So I think I'm probably reducing it as a layperson. I
7 just viewed this as you either keep your coins or you give
8 them to someone. And so in this case, I viewed the terms of
9 use from when I joined up until now as if you send your
10 coins in to be used to earn yield, you're giving them to the
11 company. If you don't want to do that, don't send them to
12 the company and enroll them in the Earn program.

13 So from my perspective, I don't really see any material
14 change. Some of the wording may have changed where the loan
15 was introduced. I don't know the reason for why that was
16 done exactly. From my perspective, I think that there has
17 been no material changes.

18 Q And Mr. Blonstein, how many versions are there of the
19 terms of use?

20 A Eight.

21 Q And can Celsius determine what the latest version of
22 the terms of use that a user signed is?

23 A Yes.

24 Q And did Celsius do that?

25 A Yes.

1 Q And how many users, account holders, on a percentage
2 basis, signed version six or later?

3 A Six or later. So by count of customers, I think it's
4 over 90 percent and in terms of asset values, because we
5 have a lot of customers that may have accepted but never
6 sent coins on the platform, I think it's 99 percent of the
7 asset value.

8 MS. BRIER: All right. No further questions at
9 this time.

10 THE COURT: All right. Thank you.

11 MS. BRIER: Thank you, Your Honor.

12 THE COURT: All right. You're excused. Thank you
13 very much.

14 THE WITNESS: Thank you.

15 THE COURT: Mr. Nash?

16 MR. NASH: So Your Honor, that concludes the
17 evidentiary portion of the hearing.

18 THE COURT: Do you rest?

19 MR. NASH: We rest, Judge.

20 THE COURT: All right. Do any of the objectors
21 wish to offer evidence in support of their objections? The
22 Court has read all the objections. Hearing no response, the
23 Court determines that the objectors have rested as well. We
24 can proceed with the argument then. Why don't we take -- so
25 it's 11:42. Let's take a ten-minute recess, and then are

1 you going to make the argument, Mr. Nash?

2 MR. NASH: I will, Judge. Should we do that at
3 noon just to be -- or I'd hate to --

4 THE COURT: Sure. We'll come back at noon.

5 MR. NASH: Perfect.

6 THE COURT: Okay.

7 MR. NASH: Thank you, Your Honor.

8 THE COURT: All right. Thank you.

9 (Recess)

10 THE COURT: Please be seated. All right, Mr.
11 Nash.

12 MR. NASH: For the record, Pat Nash from Kirkland
13 and Ellis on behalf of the Debtors. So Your Honor, the
14 issue before you is whether or not there is an enforceable
15 contract between the Earned depositors and Celsius, and if
16 there is, do the unambiguous terms of that agreement provide
17 that upon depositing coins onto the platform, individuals
18 transferred title to their digital assets such that those
19 digital assets are property of the estate.

20 And of course if we're talking about whether or
21 not we have an enforceable contract, Judge, we're talking
22 about offer, acceptance, and consideration. The terms of
23 use, Judge, that was the offer from Celsius and from the
24 evidence in the record we know that there were eight
25 versions of the terms of use. From the evidence that's in

1 the record we know that the terms of use were accepted by
2 90.06 percent of account holders and those holders, their
3 coin deposits represent 99.86 percent of the Earn
4 liabilities, Judge.

5 We know from Mr. Blonstein's testimony that
6 approximately 55 percent of account holders first accepted
7 terms of use Version 5 or earlier. We also know from Mr.
8 Blonstein's testimony that all of those users, all of those
9 55 percent were required to accept terms of use Version 6 in
10 order to maintain access to their accounts.

11 THE COURT: So Mr. Nash, having gone through all
12 of the versions, Versions 1 through 5 are less clear to me
13 on the issue of owners. Version 6 forward was clearer. The
14 screenshot of the update in terms of service for Version 6
15 listed, I think, three major changes, significant changes.
16 Is there a screenshot for the changes between Versions 4 and
17 5? I don't remember seeing that.

18 MR. NASH: There's not, Your Honor.

19 THE COURT: And that's -- it is the change from
20 Version 4 to Version 5. I thank the Debtor -- I thank the
21 Committee for its limited objection that it filed because it
22 went through each of the versions you did not in your
23 papers. You simply said, look at the exhibits. And it does
24 seem to me that arguably -- I haven't made up my mind.
25 There was a more significant change between Versions 4 and

1 Version 5 that were not highlighted to customers. I sort of
2 take Ms. Cordry's point in her cross examination about it.

3 The objectors did not put in any evidence of any
4 of Mr. Mashinsky's videos or anything else that he's
5 allegedly said. It's not in the record. The record is
6 closed. And so if objectors had evidence they wanted to
7 offer, they had their chance and they didn't. So I don't
8 know what Mr. Mashinsky said or didn't say or whatever. And
9 I certainly -- again I haven't made up my mind about it, but
10 I do note it does seem to me that there was -- the language
11 changed between Versions 4 and 5; 6 comes along and
12 highlights some changes. Not saying they weren't important,
13 but nothing that that bears on the ownership issue.

14 Let me just see. So the percentage of the account
15 holders who became account holders, Version 6 and after, was
16 a pretty high percentage.

17 MR. NASH: Forty-five percent, Judge.

18 THE COURT: Okay.

19 MR. NASH: And if I may, Your Honor, I will argue
20 that it is of legal significance that everybody who
21 initially signed up for Versions 1 through 5 also clicked
22 acceptance.

23 THE COURT: Oh, I understand that. They -- yeah,
24 I got that.

25 MR. NASH: With respect to Version 6. Thank

1 you.

2 THE COURT: I got that point. But I suppose that
3 Ms. Cordry's point is that -- and you may disagree with me,
4 that there was, the language changed in any important way
5 between Versions 4 and Version 5. It did seem to me that it
6 did. And I guess Ms. Cordry's point is come on, you got 40
7 pages of terms of use. Do you really think people read it
8 and no one highlighted for them that maybe there was an
9 important change? I know the position of the Debtor and I
10 think that there's support for it in the language that from
11 Version 1 on, ownership was in the Debtor. Not so clear.
12 Not as clear, let's put it that way.

13 MR. NASH: You know, one thing I'd highlight, Your
14 Honor, it's interesting because we certainly have a lot of
15 objections to this motion, plus or minus 40, I suppose. I
16 don't have the agenda in front of me. But as an actuarial
17 matter, Your Honor, as a percentage of 600,000 depositors, I
18 would submit that as an actuarial matter, why do we only
19 have -- well, why do we only have 40 objections?

20 As an actuarial matter, because a number of people
21 don't have the time, the interest, the inclination, can't
22 afford to divert themselves from their day job, can't afford
23 to hire a lawyer. But when you're talking about 600,000
24 depositors, Judge, I think it's fair to say that as an
25 actuarial matter, there are probably a number of people who

1 understood what it is they were signing up for.

2 From the very first version of the terms of use,
3 Version No. 1, every version starting with Version No. 1
4 said that the terms of use clearly state that Celsius has
5 the right for its own account to pledge and re-pledge from
6 time to time digital assets transferred to them. That was
7 the price for admission, Your Honor, in order to earn
8 rewards. Terms of use Version 2 and every version onward
9 explicitly states that the Debtors had all attendant rights
10 of ownership to such assets. Now it wasn't until later that
11 it was clearly spelled out -- clearly spelled out -- that
12 putting your coins on the platform expressly constituted a
13 transfer of title.

14 I will submit that they -- that language, that
15 concept was made more clear but it doesn't mean that the
16 earlier versions of the terms of use don't provide for a
17 transfer of title when you consider what it is that people
18 were putting their coin on the platform for Celsius to do,
19 to loan it, to pledge it, to sell it, to do whatever Celsius
20 wants to do with it in order to generate yield.

21 And it is -- and you heard Mr. Blonstein say and
22 it's, you know, it was part of his testimony. I believe it
23 came out in cross examination. He didn't think that the
24 change was material -- now he's just one customer, also an
25 employee -- because he believes and he believed himself that

1 when he accessed the Celsius platform pursuant to one of the
2 earlier versions of the terms of use, he understood what he
3 was doing and the legal effect or the practical effect of
4 putting his coins on the platform.

5 So you know, our position, Judge, is that we have
6 offer, we have acceptance through the clickwrap. A ton of
7 caselaw, Your Honor, about how that is a valid manifestation
8 of acceptance. It isn't fair to all the other depositors.
9 Presumably some people read the terms of use and understood
10 what they were doing. Now we have a very vocal minority of
11 our customers who have objected, many of whom have objected
12 to all sorts of pleadings, which is perfectly fair. It's
13 their right. But we have a whole host of, as I said,
14 customers who haven't objected and in addition to what I
15 think is the clear legal argument around offer, acceptance,
16 and consideration, this is bankruptcy court, a court of
17 equity.

18 We have practical considerations. We have
19 equitable considerations. Many of the objectors, you know,
20 the -- what they're asking for is something that we are not
21 going to be able to do. We do not have enough coin to give
22 everybody their coin back in kind. We don't have enough
23 coin to establish 600,000 constructive trusts to give
24 everybody their coin back. We have a universe of coin that
25 we're working very closely with the UCC and we're getting a

1 lot closer to moving these cases forward as you'll hear in
2 connection with the exclusivity extension.

3 You know, there is a light at the end of the
4 tunnel but in order to maximize the recovery of all of the
5 Earn customers, we're going to have to do this collectively.
6 We -- you know, and Your Honor, as is clear in the coin
7 reports, I don't know that it's part of the evidence, but
8 nobody disputes. We've got lots of some kinds of coins. We
9 have very few of other kinds of coins. We don't have the
10 ability to trace individual people's coins.

11 And so on the one hand, it's our strong view that
12 we have offer, acceptance, consideration. But then as a
13 practical matter, if that's not the outcome, I don't know
14 where we go from --

15 THE COURT: Let me ask you -- move to a different
16 question. In the proposed order that you've submitted, I
17 don't know whether there have been any further changes to
18 it. I think it was indicated this was something that was
19 agreed upon with the Committee's counsel.

20 On Page 3 in No. 3, it reads in part, "The amended
21 motion will not seek findings with respect to, one,
22 ownership of assets in the Debtor's borrow program or
23 custody service or withhold accounts; or two, whether any
24 account holder has valid defenses to the reported contract
25 between account holders and the Debtors under the terms of

1 use and all parties' rights are reserved with respect to
2 each of the foregoing," and it goes on with provided.

3 So what are the -- was there, is there a
4 background to the discussion of this carveout for valid
5 defenses to the reported contract?

6 MR. NASH: Yeah, that was heavily negotiated with
7 the UCC, Judge. And so your next question might be, well,
8 what does that mean.

9 THE COURT: Yeah, that's the next question.

10 MR. NASH: I understand. So at a minimum, Your
11 Honor, what we seek here is the general rule as to what the
12 terms of use provide. And I suppose it's possible in
13 connection with the claims resolution procedure, in
14 connection with a claims objection from a customer, in
15 connection with an affirmative pleading from a customer,
16 it's possible that a customer might petition the Court or
17 make the argument, a very personalized individual argument,
18 as to why for some reason they should be excepted from the
19 terms of use.

20 THE COURT: Well --

21 MR. NASH: For example, I can't -- is there a
22 customer out there -- Mr. Mashinsky went to lots of trade
23 conferences and whatnot. Is there a customer out there
24 who's going to be able to come in front of Your Honor and
25 say that he had -- he or she had specific conversations with

1 specific Celsius management that caused them to think the
2 terms of use didn't -- I don't know what those would be,
3 Your Honor. Because I don't think it's going to be at the
4 end of the day, folks who, you know, watched the Mashinsky
5 videos.

6 Because again, with 600,000 customers, I think,
7 you know, tens of thousands, if not hundreds of thousands of
8 our customers watched the AMAs, the "Ask Mashinsky Anything"
9 videos. And so I'll be surprised if we have personalized,
10 you know, unique defenses.

11 THE COURT: Let me ask this question. What about
12 arguments about rescission and restitution for fraud? A lot
13 -- you know, reading pro se objections, lots of people said
14 they think there was fraud. One thing to say; another thing
15 to prove it, but --

16 MR. NASH: Perhaps we'll have pro se or other
17 creditors who will bring a motion or pleading to that
18 effect. Nothing in this order would prohibit them from
19 doing that. But in order to move the case forward --

20 THE COURT: Well, you know, I mean, part of my
21 concern, I approved a bidding procedures motion. And I
22 asked myself, what is someone bidding on.

23 MR. NASH: Correct.

24 THE COURT: And what have you -- what have you
25 bought if there's an express carveout or defenses to

1 purported contract between account holders and the Debtor
2 under the terms of use? I don't -- I'm sitting. I'm
3 reading this stuff over the weekend. I was saying --

4 MR. NASH: Yeah, we're -- we can manage that,
5 Judge. We're managing that with the bidders. We're in
6 discussions with the bidders. They're following the hearing
7 closely, the hearings and the proceedings. It's very
8 important, Your Honor, that we establish the general
9 baseline as to the legal effect of the terms of use, and the
10 legal effect, I submit and expect that will be, you know,
11 binding on the vast majority, all very rare exception
12 potentially, should someone seek it or bring it.

13 There's nothing in this order that forever cuts
14 off somebody's right to file some type of pleading with Your
15 Honor to seek to bring to Your Honor's attention their own
16 individual circumstances, and if they do, we'll deal with
17 it.

18 THE COURT: In terms of percentage of value of
19 account holders, how many are Version 6, you know, first
20 logged on Version 6 or after?

21 MR. NASH: So --

22 THE COURT: Forty-four percent?

23 MR. NASH: Forty-five percent in terms of the
24 percentage of the liabilities on the platform.

25 THE COURT: Yeah.

1 MR. NASH: I don't have that at my fingertips, but
2 probably by the time -- it's probably here somewhere and
3 we'll seek to get it for you.

4 THE COURT: Okay. All right, go ahead you're your
5 -- you know, I've read all these papers.

6 MR. NASH: Yeah, so I'll move from the Earn to the
7 selling of the Stablecoin.

8 THE COURT: Sure.

9 MR. NASH: If you conclude that the Stablecoin is
10 our property.

11 THE COURT: Let me cut this a little shorter. In
12 my own mind, and Ms. Cornell can argue to the contrary about
13 it, but frankly I don't have to decide whether this is
14 ordinary course of business or not, because you argue and it
15 seems to carry some persuasive weight with me that even if
16 it's not ordinary course of business and the Committee
17 certainly argues this, it's the best interests of the
18 Debtors. It's the proper exercise of business judgment.

19 And frankly, you know, Ms. Cornell is going to
20 take issue with this, but whether the sale, if I approve it,
21 whether it happens next week or next month or in stages as
22 needed, yeah, I mean, the Debtors can only use the assets.
23 You know, they can't use it in a slot machine in Monte Carlo
24 but they can pay salaries and administrative expenses and
25 all that.

1 So I, you know, at least my mindset right now is
2 if I conclude that everything in the Earn accounts is
3 property of the estate, which I'm not there yet -- take it
4 under submission -- Stablecoin is no different than anything
5 else in Earn accounts. And I agree with the Committee, it's
6 not ordinary course of business. You don't have an ordinary
7 course of business at this point.

8 MR. NASH: That's why in the alternative, Your
9 Honor --

10 THE COURT: Look, it doesn't -- that's why I say,
11 it doesn't -- frankly, it seems to be an appropriate
12 exercise of business judgment to sell Stablecoin, have that
13 liquidity ramp. If you -- no one better go to Las Vegas and
14 gamble it. You're not deploying the assets the way you were
15 before. So you know, that's -- my mindset at this point is
16 if it's property of the estate, showing good business
17 judgment to sell it.

18 MR. NASH: Unless you have any other questions for
19 me., Your Honor --

20 THE COURT: I don't.

21 MR. NASH: Thank you, sir.

22 THE COURT: Let me hear from the Committee.

23 MR. COLODNY: Good afternoon, Your Honor. Aaron
24 Colodny from White and Case on behalf of the Committee. I
25 have a number of pages that I'm guessing I'm not going to

1 get through. I'll start --

2 THE COURT: I would like to eat lunch before we go
3 on Zoom for the afternoon calendar.

4 MR. COLODNY: That's true.

5 THE COURT: Well chosen.

6 MR. COLODNY: I'll start by noting that the
7 Committee understands why account holders who feel that
8 they've been misled and mistreated would be upset with the
9 finding that digital assets they have transferred to Celsius
10 are Celsius' property.

11 THE COURT: Yeah, some of them are upset at the
12 Committee and its counsel, too.

13 MR. COLODNY: I think we had 397 of them.

14 THE COURT: Yeah.

15 MR. COLODNY: But the Committee's first obligation
16 is to, when faced with his hard question, is to get the
17 correct answer. And we believe that this answer is both
18 right on the law and it best serves the interests of account
19 holders and creditors, and I think this goes to the
20 equitable concerns that Mr. Nash read. The Debtors have \$16
21 million of available Stablecoin and a billion dollars' worth
22 of Stable --

23 THE COURT: Though it was \$18 million.

24 MR. COLODNY: Eighteen. Apologies. And a billion
25 dollars' worth of Stablecoin obligations. That's a less

1 than 1 percent recovery. And if you say, I deposited
2 Stablecoin with the Debtors and that Stablecoin is my
3 property, then you have a very hard claim to say, I have an
4 interest in other assets of the Debtors. Personally, I
5 don't think it's fair that people that deposited money with
6 the Debtors and had no control over what was lost or
7 otherwise squandered, get 1 percent versus others get 60 to
8 80 percent.

9 THE COURT: Look, I've written before that a
10 fundamental tenet of our bankruptcy system is equality of
11 distribution. And I commented in earlier hearings in this
12 case that to the extent that any account holders are able to
13 establish that what they deposit is their property, not the
14 estate's property, it's that much less available for
15 distributions to the creditor body at large. That's sort of
16 fundamental premise, but it doesn't decide the ownership
17 interest.

18 MR. COLODNY: It doesn't decide the ownership
19 issues. And a couple of questions that you asked Mr. Nash
20 were about the click back mechanism, and the disclosure that
21 was given to account holders. I think the Uber case is very
22 relevant. There the Second Circuit Court of Appeals was
23 looking at California law, but it noted that New York law
24 was extremely similar and it was looking at a decision of
25 the District Court that said that a -- I think it was

1 someone using the ride hailing app didn't have notice of the
2 arbitration provisions and the District Court found that it
3 wasn't proper inquiry notice because the arbitration
4 provision was, you know, deep within the terms of use.

5 And the District Court said, or the Second Circuit
6 said, as long as the notice is clear that when you click
7 accept you're accepting the terms of use and the terms of
8 use are available to the person, then that is a proffer,
9 offer, and acceptance of those terms of use.

10 THE COURT: Yeah, the ALI has been -- I don't know
11 where the current, this issue currently stands. They
12 debated whether to start a project on consumer clickwrap
13 contracts because the reality is most -- you get your credit
14 card agreement. You know, even in paper, you don't read the
15 whole thing. Clickwrap contract, who's going to read the --
16 how many people really read the 40 pages? \But you check
17 the box and Celsius says, unless you check the box, you
18 can't, we won't give you access to your capital. Set a
19 deadline. I understand all that, but it's the reality of
20 modern business, frankly, and it's a dilemma and it's an
21 issue, but the law is developing the way it's developing.

22 MR. COLODNY: Well, I guess I have a lot here
23 about how --

24 THE COURT: Let me ask you specifically, and I
25 really, I derive this from your brief and maybe you disagree

1 with me. But it seems to me that the most significant
2 change in language, I won't use the word material, okay.
3 The most significant change in language about ownership
4 happened between Versions 4 and 5 and those changes weren't
5 -- there's no screenshot showing that it highlighted the
6 change in that language. Do you agree or disagree with
7 that?

8 MR. COLODNY: We're aware of no screenshot that
9 highlighted that change in language. But I --

10 THE COURT: Do you think that was a material
11 change? You didn't think it was a significant change? Drop
12 the word material. Material has legal connotations I'm not
13 trying to put on it.

14 MR. COLODNY: So when I look back at the versions
15 of the terms of use, the first version has a representation
16 and warranty that says that you agree that Celsius can
17 pledge and re-pledge all of your assets. And in the second
18 version it gets clearer and it says Celsius can pledge, re-
19 pledge, re-hypothecate, sell -- someone took a list of every
20 transaction they could think of, put it there. And it says
21 with all attendant rights of ownership.

22 THE COURT: It does, it -- right at the end of it
23 there. It says with attendant rights of ownership. Those
24 are the words that are --

25 MR. COLODNY: That's right. And I'm not sure how

1 you can give attendant rights of ownership if you don't have
2 attendant rights of ownership. And I know that it got
3 clearer where it says, you transfer all right, title, and
4 interest later on. But I think that second term of use
5 which was signed up by 96 percent of the account holders did
6 say you're giving your stuff to Celsius and Celsius can sell
7 it to whoever it wants without notice to you with all
8 attendant rights of ownership.

9 So it may have gotten clearer, but I think it's
10 there from at least the second version. And I believe the
11 first one as well.

12 THE COURT: Okay.

13 MR. COLODNY: With respect to the defenses --

14 THE COURT: I don't know what -- I mean, I --

15 MR. COLODNY: I saw with the Debtors' counsel and
16 tried to bang my head against the wall. We had a hearing on
17 December 5th and I think we had 20 days over Thanksgiving
18 holiday with a lot of people that wanted to take a lot of
19 discovery. We have been taking a lot of discovery and I was
20 not confident that we could get it done in the time period
21 that we had. By reserving defenses, I believe that we
22 preserved an element of due process that otherwise people
23 would have complained perhaps rightly about and I think that
24 we preserved those for a later date. I think --

25 THE COURT: Why -- you just tell me why the chief

1 revenue officer refused to appear for a deposition? You
2 wanted his deposition. This is -- I'm reading Footnote 20
3 of your --

4 MR. COLODNY: We did not ask for a deposition
5 because before the opponents were identified, we agreed that
6 we would only use their declarants. The point of that
7 footnote was to say that Mr. Blonstein testified that he
8 wasn't directly involved with the solicitation. He also
9 testified at his deposition that Mr. Cohen-Pavon was
10 involved. The Debtors didn't produce him and we didn't have
11 a chance to talk to him. We've sought to serve him with
12 Rule 2004 requests and he has resisted and said this was --

13 THE COURT: Just tell me what your view is. I
14 mean, he's a current employee?

15 MR. COLODNY: He is.

16 THE COURT: Why do you need a subpoena? I don't
17 think you need a subpoena for him. I mean, you served a
18 notice of deposition for him. If they didn't produce them,
19 I deal with it.

20 MR. COLODNY: Point taken.

21 THE COURT: You know, you talk about that he
22 wanted to be served under the Hague. He's an employee of a
23 Debtor. Rule 2004, you want to take his deposition, take
24 his deposition. He doesn't want to show up, we'll deal with
25 it.

1 MR. COLODNY: Okay.

2 THE COURT: All right, anything else you want to
3 add?

4 MR. COLODNY: I guess I would like to talk a
5 little bit about the plain language of the terms of use.

6 THE COURT: Go ahead.

7 MR. COLODNY: And specifically, I think a lot of
8 people have raised this concept of a loan in a transfer of
9 title. And when I was thinking about that, I looked at
10 Section 4 of the most recent version of the terms of use
11 where it says, in all bold, "If our Earn service is
12 available to you, upon your election you will lend your
13 digital assets to Celsius and grant Celsius all right and
14 title to such digital assets for Celsius to use in its sole
15 discretion while using the Earn service."

16 I don't know how you read that to say you will
17 lend your assets to -- eligible digital assets to Celsius
18 and grant Celsius all right, title to such digital assets to
19 conflict. You would have to strike the last part of the
20 sentence. And that's not how we're supposed to write --
21 read contracts. The same is true for Section 13, which the
22 Debtors site as their long sentence giving title. And I
23 think it's key that the Debtors didn't have an obligation to
24 give you back your exact crypto asset. They had an
25 obligation to give you back a like kind crypto asset.

1 Crypto is fungible like money. If you get a loan
2 of dollars, you have to give dollars back, but not the exact
3 same dollars. And I don't think that they -- that that
4 indicates that there was an ownership in a potential -- in a
5 particular asset that the Debtor was holding.

6 You noted some reservations we had in an order
7 about the sale of Stablecoin. I think the Debtor has agreed
8 to those, notice to use them only for ordinary course
9 business reasons, to use them only when the Debtors reach
10 their minimum liquidity threshold is responsible operation
11 of the business.

12 And I guess just lastly, Your Honor, I want to --
13 I know you said this earlier, but I think it's very
14 important that that everybody understand that just because
15 Celsius has the property and the property may be property of
16 Celsius does not mean it's not going to be distributed to
17 account holders. It doesn't mean Celsius can do whatever it
18 wants with it.

19 When you are a Debtor in bankruptcy, Celsius has
20 to come to Your Honor and ask to do anything outside of the
21 ordinary course of business. If it wants to confirm a plan,
22 all account holders then get to vote on that plan. If it
23 wants to sell its assets as part of the bidding procedures,
24 it has to prove to Your Honor that that's in its business
25 judgment and one of the key elements of that is going to be

1 if it's in the best interests of the account holders.

2 And so this is not people giving their money to
3 Celsius and Celsius taking it and saying it's mine now, you
4 don't get it back. Celsius has an obligation to each
5 account holder to pay them back. They don't have enough to
6 pay everybody back. It's very important to the Committee
7 that we reach a fair distribution of assets that recognizes
8 people's -- what people signed up for and distributes things
9 fairly based on what happens. It wasn't the fault of
10 anybody who got themselves into this mess. But it is
11 important that it be sent fairly and efficiently, because
12 one thing we've all heard today is these cases cost a lot of
13 money and we need to be making movement towards the exit so
14 that we can cut that off and get as much back to people as
15 we can as soon as possible.

16 THE COURT: Okay, thank you.

17 MR. COLODNY: Thank you.

18 THE COURT: All right. Ms. Cornell, do you want
19 to be heard?

20 MS. CORNELL: Good morning again, Your Honor.

21 Shara Cornell on behalf of the Office of the United States
22 Trustee.

23 THE COURT: Good afternoon. That clock is wrong.

24 It's not as bad as that, but we're at the end. Go ahead.

25 MS. CORNELL: Close. The United States Trustee

1 filed objections to the Debtors' motions to sell Stablecoin
2 at ECF Docket No. 933 and 1489. As discussing these
3 objections, there are two distinct issues today and I just
4 want to keep it brief.

5 The first is whether the Debtors have authority to
6 sell the subject Stablecoin and the second is whether
7 assuming the Debtors can sell the Stablecoin, if they should
8 sell that Stablecoin. And it really is questionable whether
9 the Debtor should, as of today, sell \$18 million worth of
10 Stablecoin.

11 By the admission of the Debtors' professionals and
12 employees, the Debtors do not currently need the money and
13 won't need the money until March. The Debtors have relied
14 on their business judgment as to why Stablecoin should be
15 sold, but business judgment is not unfettered and at a bare
16 minimum, the Debtors must create an evidentiary basis why
17 they're selling what they're selling, including the
18 quantity, and why it needs to be sold now instead of at a
19 later date and what the proceeds of the sale will fund.

20 The Debtors have admitted that they can sell at
21 any time. Moreover, a liquidation analysis, not even been
22 done yet. Regardless of how the parties try to divert
23 attention in this case to other issues, there is no way that
24 the sale of these coins will not impact a later distribution
25 to creditors. If the parties are going to sell the Debtors'

1 business as a going concern --

2 THE COURT: Why is that?

3 MS. CORNELL: I'm sorry?

4 THE COURT: Why will it not -- why will it not
5 affect later distributions? I mean I asked the question as
6 well and they -- well, they can buy more Stablecoin if
7 there's other liquidity they can -- you know, and then
8 they're not going to face the vast market swings that the
9 other crypto has if they commit to distributing Stablecoin
10 to those who deposited Stablecoin. They may not have it
11 now, but they can get it later.

12 MS. CORNELL: I haven't heard that commitment to
13 date, Your Honor.

14 THE COURT: They said it today. You heard that?
15 That was -- I asked the question that you know how much is -
16 - they're not selling. At this point, they're not seeking
17 authority to sell anything connected with custody or
18 withhold or the collateral for loans and that's how they get
19 to the \$18 million. Okay. And I suppose, you know, we'll
20 get to some point where we'll resolve the issues of custody
21 and withhold and -- but what, you know, they can convert
22 fiat currency into Stablecoin at any point if they're going
23 to have a plan. Agreed?

24 MS. CORNELL: I don't see why not, but we haven't
25 gotten to that point yet where we've seen anything --

1 THE COURT: I know, so what --

2 MS. CORNELL: -- from the Debtors.

3 THE COURT: But I don't --I truly am mystified
4 about what the real -- assume for a moment, okay, that it's
5 property of the estate, Okay. If it's not property of the
6 estate, they can't. Okay. Assume it's property of the
7 estate. I don't understand what your real objection to
8 their selling the Stablecoin, converting it into fiat
9 currency, they have to use the proceeds in ordinary course
10 of business, administrative expenses, including salaries and
11 all that. They can't go to Las Vegas. Frankly, the dollars
12 are going to -- in my view, safer than crypto and we had
13 lots of, you know, effort in this case dealing with 345 and
14 all that.

15 I'm frankly more comfortable if it's in fiat
16 currency. So I'm really, I'm somewhat mystified about what
17 your real objection is.

18 MS. CORNELL: At this point, my objection is based
19 solely on that the Debtors just haven't provided an
20 evidentiary basis for what they're going to use the proceeds
21 for. We've heard today that they are currently funding non-
22 Debtor entities to the tune of \$500,000 at least. They
23 couldn't point to the budget that was provided to the
24 parties to explain that and they want to convert \$18 million
25 worth of cryptocurrency to fiat and it's unclear to at least

1 me as to what that money is going to be for.

2 THE COURT: So let me ask you this. If the Court
3 determined that the Stablecoin is property of the estate,
4 what prevents them from transferring Stablecoin to one of
5 these other entities, Debtor or non-Debtor entities? I
6 mean, they better -- you know, they're going to need my
7 approval, but whether it's Stablecoin or fiat, they're going
8 to need the same approval. I'm sure the Committee is going
9 to be screaming bloody murder if they try and use the funds
10 to fund non-Debtor activities that there are inadequately,
11 you know, not collateralized and all that. True?

12 MS. CORNELL: It's possibly true, but we do know,
13 we know right now that they are making those types of
14 payments to non-Debtor entities.

15 THE COURT: So object to it.

16 MS. CORNELL: We're in the process of gathering as
17 much information because we weren't aware of those based on
18 the budgets that were provided.

19 THE COURT: Come on, Ms. Cornell. I asked at the
20 first day hearing, first or second day, I asked because I
21 always ask about, are funds being used, transferred to non-
22 Debtors, non-Debtor affiliates.

23 MR. NASH: Your Honor --

24 THE COURT: No, don't interrupt, Mr. Nash.

25 MR. NASH: Sorry, Judge.

1 MS. CORNELL: I mean, that's all at this time,
2 Your Honor. We were just looking for their evidentiary --

3 THE COURT: You have a position on whether crypto
4 assets including Stablecoin are property of the estate?

5 MS. CORNELL: No, Your Honor, not at this time.

6 THE COURT: Okay, thank you.

7 MS. CORNELL: Thank you.

8 THE COURT: All right. Who else wants to be
9 heard?

10 Go ahead. Ms. Milligan, you want to be heard?
11 You're on the screen.

12 MS. MILLIGAN: Yes, Your Honor, thank you. Layla
13 Milligan on behalf of the Texas State Securities Board and
14 Texas Department of Banking and we also filed an objection
15 to the amended Earn and Stablecoin motion at Docket 1496,
16 which I'm sure this Court has read, and thank you for your
17 time.

18 One of the issues that we are concerned with in
19 this case because we are looking at this from a regulatory
20 standpoint, it's our understanding that the Debtor has never
21 been regulatorily compliant. Mr. Blonstein, who is the
22 chief compliance officer, could not attest whether they were
23 ever registered as a securities broker dealer, any sort of
24 securities regulation. We have serious concerns about --

25 THE COURT: Let me just -- let me stop you there.

1 Okay. Let's assume for our discussion, they have not
2 complied with state securities regulations. How does that
3 deal with whether or not, A, it's property of the estate or
4 B, whether I should permit them to sell the Stablecoin and
5 use it in connection with the case? That's the issue for
6 today.

7 MS. MILLIGAN: Because the concern is that the
8 contract was an illegal contract and that makes the contract
9 void and unenforceable. And that issue was carved out --

10 THE COURT: I'm not so --

11 MS. MILLIGAN: -- between --

12 THE COURT: I'm not sure about that because, you
13 know, then we get in issues about 510 in the Bankruptcy Code
14 and subordination and you treat the securities law claims.
15 Basically, they're treated the same way. They'd be -- here,
16 they'd be treated as unsecured claims. I mean, so -- I
17 mean, the Bankruptcy Code deals with it in Section 510.
18 There've got to be a dozen Lehman Brothers decisions that
19 deal with 510. I had MF Global. I've got decisions in MF
20 Global about it. So if they violated the securities laws --

21 MS. MILLIGAN: Yes.

22 THE COURT: -- they violated -- you know, you'll
23 get your pound of flesh against them. The important -- from
24 my standpoint, I want the creditors to get their recoveries,
25 okay.

1 MS. MILLIGAN: The State of Texas wants the
2 individual investors to get made as right as possible. That
3 is the point and one of the --

4 THE COURT: We agree.

5 MS. MILLIGAN: -- carveouts -- yes, absolutely.
6 And one of the carveouts between the Committee and the
7 Debtor was to not discuss any of these defenses and not
8 produce any discovery on these defenses. And I will tell
9 you, while the Debtor continues to say they are working with
10 the Committee to formulate a plan, they are not working with
11 the regulators. And this company is severely regulatorily
12 deficient and has been and built its business on the back of
13 innocent investors. And that is who we're looking at.

14 If a contract is void and unenforceable, then it's
15 not just offer and acceptance and let's move on and sell
16 things. It's a matter of all of the elements. And one of
17 the issues is Rule 7001 provides for a way to go through,
18 not a long, painful process. The Court can keep it as short
19 as possible.

20 But what the Debtor has done is filed a motion, an
21 amended motion, scheduled three depositions over two days,
22 provided incomplete written deposition answers, assumed no
23 one else has an interest except the Committee, and is
24 (indiscernible) towards this judgment today as to that -- as
25 the assets of the estate without considering any defenses in

1 any contracts.

2 And yes, there are 600,000 investors. There were
3 probably over 9,000 in Texas alone, and we have serious
4 concerns about the process. The Earn investors are the low
5 hanging fruit in this case and the Debtors are aware of this
6 and are seeking to monetize those assets and that is our
7 concern. There hasn't been --

8 THE COURT: May I ask you a question? Would you
9 prefer that the company just liquidated tomorrow?

10 MS. MILLIGAN: I don't know what option they have.
11 We don't know what other option they have because no Version
12 2.0 has been presented that is viable and regulatorily
13 compliant. We have no information as to what -- I would
14 prefer that the customers get made right. However that
15 happens, whether through liquidation or reorganization,
16 that's what we're trying to focus on. But at this point, it
17 seems like everyone is running towards the goal without
18 knowing the rules of the road and that's our concern.

19 The examiner has a report coming out in
20 approximately a month that further examines what is going on
21 and what happened in this case. That is not being
22 considered. I just think this is a situation that the Court
23 could place on even an expedited timeline with proper
24 adjudication of all the facts and allow the parties to have
25 an opportunity to be heard and due process to happen.

1 THE COURT: From early, from the very first days
2 in this case, the ownership of Earn assets was identified
3 as, you know, a gating issue. So what I strongly disagree
4 with, Ms. Milligan, is that somehow -- you make it sound
5 like they sprung this on you. From right at the start of
6 this case, the -- in their, you know, in their first brief
7 they filed, they identified a range of issues that are going
8 to have to be resolved. I've known about it since day one
9 and I think you have, too, so they didn't just spring this
10 on anybody. If an exit strategy is going to be pursued with
11 a 363 sale, the buyer has got to know what they're bidding
12 on.

13 It's crucial to know this in order to do that.
14 Any buyer is going to have to comply with state and federal
15 regulations going forward. I've commented on that before as
16 well, you know. It may well be that this Debtor failed to
17 comply with multiple state regulations and federal
18 regulations. That's for another day and maybe for another
19 Court. But the point is the issues that are being addressed
20 today were identified as in day one of this case and the
21 real issue is how we can cut this enormous administrative
22 expense and get this case to the goal line to get an exit
23 and whether it's a standalone plan or 363 sale. You know,
24 I'll put this off for another six months or a year and
25 there'll be a corpse left. Any other points you want to

1 make, Ms. Milligan?

2 MS. MILLIGAN: No, Your Honor. I think we just
3 stand with the arguments in our pleading and I --

4 THE COURT: Okay.

5 MS. MILLIGAN: -- appreciate the Court's time.

6 THE COURT: Thank you. All right, anybody else
7 wish to be heard? Ms. Cordry.

8 MS. CORDRY: Yes, Your Honor.

9 THE COURT: Go ahead.

10 MS. CORDRY: Okay. This is Karen Cordry again,
11 bankruptcy counsel for the National Association of Attorneys
12 General. And -- get my notes back up here. One second. I
13 think in some respects, I would agree that I -- with Mr.
14 Blonstein and the Committee that the Debtor certainly has
15 been trying to transfer -- create a transfer of ownership to
16 itself. I think the language they have done continues to
17 remain ambiguous.

18 I think the statement that, well, if I say I'm
19 loaning to you and therefore I'm transferring ownership,
20 that if I treat that as being ambiguous, I'm dropping off
21 the second half of the sentence, well, it also means that if
22 you don't treat it as ambiguous, you're dropping off the
23 first half of the sentence.

24 I don't think we've ever had an explanation as to
25 why they continue to use the loan terminology throughout the

1 terms of use. Perhaps it's a matter dealing with the
2 securities laws, the fact that this company is almost
3 certainly operating unlawfully in terms of whether or not
4 it's compliant with the securities law. We certainly don't
5 have any assurance yet that they're doing anything to bring
6 themselves into compliance because they still have not
7 identified, apparently, anyone who's actually working on
8 those issues as Mr. Blonstein is not yet doing those.

9 I think the notion that people understood what was
10 being done with all of these subsequent terms of uses and
11 these claims about transferring ownership and so forth, I
12 think that's really a very highly debatable point, even
13 without the confusions from Mr. Mashinsky's terms of his
14 discussions and perhaps at a later hearing with some of the
15 other issues that may come in some more. We weren't party
16 to those and I didn't really think about --

17 THE COURT: Let's deal --

18 MS. CORDRY: -- trying to get evidence.

19 THE COURT: Ms. Cordry, let's deal with the
20 evidence in the record today.

21 MS. CORDRY: Yes, and I am.

22 THE COURT: Nobody put any evidence in the record
23 about what Mr. Mashinsky did or didn't say.

24 MS. CORDRY: I understand. I understand that, but
25 I think even without that, I think the terms of use that are

1 there in the main remain extremely confusing, ambiguous.
2 Quite clearly, if they had been trying to pull these out and
3 make these really clear that people would understand there
4 were a lot simpler ways they could have written these
5 documents, Now, and I do think you can entrust your assets
6 to someone and give them a full authority to sell it,
7 including transferring the ownership of it, and still retain
8 my own right of ownership. I think that's entirely possible
9 to do.

10 All of that said, the one thing I would agree with
11 the Committee and Mr. Blonstein and the Debtor on is that
12 from the earliest days of these documents, people did say
13 you can sell my assets in order to carry out the Earn
14 Program. I mean, that's really the essence of the Earn
15 Program. I have to give you some degree of authority to use
16 my assets and to sell them in order to make the company work
17 and to operate and to be able -- that's what they were
18 paying --

19 THE COURT: They had -- they were in -- it was a
20 lending platform. They had to deploy the assets --

21 MS. CORDRY: Correct.

22 THE COURT: To be able to earn something they
23 could share with account holders.

24 MS. CORDRY: Correct, and that, I think is
25 something that far predates all of these claims about

1 transferring ownership. It is this point that I can lend
2 you my asset and I can tell you, you can use it, sell it,
3 pledge it, whatever, and when I want it back, you're going
4 to give it back to me. That was -- that is part of the
5 bargain that I was striking with you that yes, I am --
6 whatever kind of transfer I'm making it to you, it is within
7 the context that you will give me back my asset whenever I
8 ask for it.

9 THE COURT: No, they would give back --

10 MS. CORDRY: -- timetable.

11 THE COURT: Not the. There was no commitment to
12 give back the same Stablecoin that somebody -- you would get
13 a distribution, you'd be repaid in kind.

14 MS. CORDRY: Exactly. I was not meaning that you
15 would get back the exact, but that I would get back my
16 assets.

17 THE COURT: Isn't that significant that there was
18 no commitment to pay back the specific assets? If you
19 continue to have ownership of the assets and you deposit it
20 and was there something in there that says you got to give
21 me back exactly what I -- you know, the same Bitcoin, the
22 same Stablecoin? No. You're going to pay us back in kind.

23 MS. CORDRY: I agree, but I don't think that's
24 inconsistent with saying that I'm still retaining rights in
25 what I transfer to you. But there is rights to sell and

1 that's, I guess, where I'm --

2 THE COURT: They retained a contract right. They
3 retained a contract right to receive back in kind whatever
4 form of crypto they deposited. That's all well and good
5 until they go bust.

6 MS. CORDRY: Right. But, and I think that's part
7 of what they're saying here is we want the right to sell but
8 we're not -- we don't want to acknowledge the fact that that
9 right to sell was given in the context of you had to give me
10 back what -- the kind of coin I deposited with you. But my
11 bottom line is, I guess I would agree that I think they
12 probably can sell this within that context of that original
13 authority.

14 What I would hope the Court would do is make the
15 narrowest possible decision it can because I think it
16 doesn't necessarily have to decide the ownership in the
17 context of this motion, because I think that right to sell
18 stands of its own authority apart from the transfer of
19 ownership because they were selling that long before they
20 put all this language in there about transferring ownership
21 and control and so forth.

22 In terms of whether they should do it at this
23 point, I have a number of the same concerns that the Trustee
24 does. The liquidity -- they said at the end of October,
25 they had \$172 million. At a \$20 million rate -- burn rate,

1 that's still \$72 million at the end of March. We have the
2 GK8 sale that's going to go through presumably in a very
3 short order; gives them another month-and-a-half to two
4 months of liquidity.

5 To the extent -- I know a number of my clients
6 were concerned that perhaps there should be a sale now to
7 deal with any potential fallout from all the turmoil in the
8 crypto market, but it sounds like they're very confident
9 that there will be no issue with being able to sell this at
10 any point they want to and re-buy it at the same point,
11 which in fact kind of makes you really wonder why should I
12 sell it if I'm going to re-buy it again to make this plan
13 work?

14 Our motion or our position in the objection stated
15 was if there was really a need to sell it and if there's
16 some valid basis to sell it at this moment, as opposed to
17 some later point when there actually is a liquidity crunch,
18 it should at least be held in escrow in order to make sure
19 that if there are further developments with other issues in
20 the case that would throw more light on this when the
21 examiner's report comes out in full, you know, and so forth
22 that --

23 THE COURT: May I ask you this, Ms. Cordry?

24 MS. CORDRY: Yes. Sure.

25 THE COURT: If the Court determines that the Ear

1 assets including Stablecoin are property of the estate,
2 could you point me to any authority or cases that say no,
3 let's separate this and put this pot in escrow? I mean,
4 it's -- it becomes, you know, at that point the assets of
5 the estate becomes somewhat fungible and certainly to the
6 extent there in fiat currency, it's fungible. Yes, there
7 are limits and restrictions on what a Debtor in a Chapter 11
8 proceeding can do with it. It's not as if they get this \$18
9 million and they're off to Las Vegas or Monte Carlo with it.

10 MS. CORDRY: I understand.

11 THE COURT: That's the ticket to jail.

12 MS. CORDRY: For sure. I think the Court has its
13 general 105 authority, which we've been told is the best
14 authority in the world to hold these funds if only because
15 if there was --

16 THE COURT: Boy, I bet you've argued plenty of
17 times that that 105 doesn't give a bankruptcy judge a lot of
18 authority to do anything.

19 MS. CORDRY: And I've generally been overruled on
20 that, Your Honor. I have been told, as I say, that I think
21 it's the best authority in the world is that Section 105
22 authority. I think that certainly gives you the power to
23 hold it there just to ensure that if there are further
24 developments, if there are --

25 THE COURT: I'm really not trying to cut you off,

1 but do you have any last points you want to make?

2 MS. CORDRY: I think that's really it, because I
3 think, you know, the other point is really would just like
4 to see where this case is going and that's part of the
5 development as well.

6 THE COURT: Me, too.

7 MS. CORDRY: If there really is going to be an
8 operating company that can comply with securities laws, then
9 we'd like to see that and that would make us a lot more
10 confident about having this money being spent. Thank you.

11 THE COURT: And the sooner that happens, the
12 better off everybody will be.

13 MS. CORDRY: Exactly, because we --

14 THE COURT: And I think Kirkland and the Debtors
15 agree with that as well. I mean, it's not -- and that's
16 what strongly counsels against putting this off for months
17 before a decision is made. We've got to move forward, in my
18 view. I made this point to Ms. Cornell. There's been
19 plenty of notice -- to Ms. Milligan, I made this point.
20 There's been plenty of notice from day one that these were
21 gating issues. Anything else, Ms. Cordry?

22 MS. CORDRY: I think -- on the same basis, though,
23 it's been clear from day one that whether this Debtor is
24 going to come into compliance with the securities law is
25 another gating issue and that has not come to the fore at

1 all yet. We have not commenced those discussions.

2 THE COURT: Frankly, they're not taking any
3 deposits or lending any money or deploying assets. I'm not
4 --

5 MS. CORDRY: Presumably -- yes. Presumably they
6 will be.

7 THE COURT: All right.

8 MS. CORDRY: -- they reorganize.

9 THE COURT: Somebody will be, either a buyer or
10 where the Debtor going forward will have to be in compliance
11 with all state regulation. Thank you very much, Ms. Cordry.

12 MS. CORDRY: Anyone else want to be heard?

13 MR. KHANUJA: Your Honor, this is Kulpreet
14 Khanuja. I'm a pro se creditor. I'm not sure if I'm
15 allowed to speak, but it --

16 THE COURT: Yes, you can. Go ahead. Please.

17 MR. KHANUJA: Thank you, Your Honor. So Your
18 Honor, I do not want to comment anything on the sale of the
19 assets themselves, but rather I want to make a comment on
20 the ownership of assets as mentioned by Mr. Nash. Now Your
21 Honor, some of these arguments I'm going to make are already
22 in my Docket 1346 with a hearing scheduled on the 20th of
23 December.

24 Now, Mr. Nash mentioned the legal effects of the
25 terms of use of the binding nature of contracts and how 55

1 percent of people signed up terms of use Version 1 to 5 and
2 the remaining for terms of 6 (audio drops). Now, Your
3 Honor, with regards to the terms of use Version 1 through 5,
4 even Celsius itself was not being compliant with its own
5 terms of use.

6 Now, the terms of use wasn't Version 1 states that
7 in Paragraph 31 if there is any changes, any significant
8 addition, deletion, subtraction to the terms of use it will
9 provide the customers proper notice and details as to what
10 specifically has been changed or altered. But then between
11 1 through 5, there was no notification provided to the
12 customers.

13 THE COURT: Let me ask you this. May I ask you
14 this? Because I'm looking at Version 2 and it included --
15 I'll read only a portion of the language. "You grant
16 Celsius the right subject to applicable law without further
17 notice to you to hold the digital assets available in your
18 account in Celsius' name or in another name and to pledge,
19 re-pledge, hypothecate, re-hypothecate, sell, lend or
20 otherwise transfer or use any amount of such digital assets
21 separately or together with other property" -- and then this
22 is the key -- "with all attendant rights of ownership."

23 MR. KHANUJA: Your Honor --

24 THE COURT: That's Version 2 and that language
25 seems to say, we own it. We, Celsius, own it.

1 MR. KHANUJA: Yeah, so Your Honor, if I may answer
2 that. So between Version 1 and 2, this is a material
3 change. And first of all, based on Version 1, where they
4 say they are supposed to inform the customers, they didn't
5 do that. That's one.

6 The second thing is, you also read that it says to
7 hold all assets, to hold customers' assets and pursuant to
8 earning rewards, they're saying they can pledge and re-
9 hypothecate and all of those things, but this is similar to
10 our securities lending with Fidelity or eTrade. It's not
11 granting total and complete ownership of the assets. That's
12 one.

13 But again, it specifically says to hold your
14 assets, and in the subsequent versions, Version 5 and 6, it
15 says transfer of rights of your assets or claim to ownership
16 -- claim to ownership of your assets. So there's a very
17 significant difference in the language.

18 THE COURT: All right, thank you very much.

19 MR. KHANUJA: Your Honor, I would also want to
20 take two more minutes. The --

21 THE COURT: Okay.

22 MR. KHANUJA: Mr. Nash also mentioned, pointed out
23 that out of 600k (audio drops) only 40 people have objected.
24 Mr. Nash mentioned that they're spending around \$15, \$16
25 million a month. Most of those have (audio drops) have than

1 10,000 of that amount to be (audio drops) to file
2 objections. Many have (audio drops) supporting the
3 objections, but not (audio drops).

4 THE COURT: Let me just say, I'm clear, very
5 clear, that there are many pro se creditors objecting, so I
6 don't put weight that it's -- is it only 40? I don't think
7 so, but that's -- okay. I have that point for sure.

8 MR. KHANUJA: Finally, both Mr. Borenstein -- I'm
9 sorry, Blonstein and Mr. Ferraro in their depositions, they
10 admitted that in their depositions that certain (audio
11 drops) sections of the terms of service were unclear and
12 ambiguous. Now, Mr. Ferraro claimed ignorance on a bunch of
13 items and Mr. Blonstein also claimed he wasn't involved in
14 the terms of service, so he should have been as part of
15 (indiscernible). Mr. Ferraro in response to my line (audio
16 drops) mentioned that he actually viewed the loan language
17 and terms of service as kind of a lien on (audio drops)
18 assets.

19 But Your Honor, a lien actually works against --
20 doesn't work against a creditor. In fact, a lien -- a
21 creditor has a lien on the assets, not the other way around.
22 Secondly, even if it was a lien, it doesn't transfer
23 ownership. Similarly, Mr. Blonstein accepted that the terms
24 were unclear to him, having read it again, and he can
25 understand the customer viewpoint. But -- so there's a lot

1 of lot of ambiguity and secondly regarding ownership of
2 assets, they both admitted that yes, they can see the view -
3 - the point of view of the customer.

4 THE COURT: Okay, thank you very much. Are there
5 other people who wish to be heard in support of the
6 objections?

7 MR. PELED: Yes, Your Honor. This is Arie Peled
8 of Venable LLP on behalf of creditor Ignat Tuganov. Thank
9 you, Your Honor. Our client is an Earn customer with
10 Stablecoin holdings and our objection is filed under Docket
11 No. 1495. The position that we've advanced has been
12 somewhat touched upon by the regulators but our position is
13 pretty straightforward, which is that the Debtors' claim to
14 ownership of the Earn assets as we've heard here today is
15 based solely on the terms of use.

16 And the examiner is currently tasked with
17 investigating facts that would help with parties'
18 determination whether or not a potential Ponzi scheme was
19 done by the Debtors and the Debtors asked the Court to
20 essentially assess their terms of use in a vacuum before the
21 parties have a benefit of that report.

22 Now, originally the two bases for that -- and I
23 think I heard Your Honor discussing today was essentially
24 the liquidity issue and the sale issue. And we've just
25 heard that liquidity is likely not a concern until March,

1 which is long after, two months after the examiner's report
2 is scheduled to come out. And in addition we just saw
3 notice of the GK8 sale, which should provide a couple of
4 more months of potential liquidity so that the liquidity
5 issue should not be a reason not to wait a few weeks to see
6 what the examiner's --

7 THE COURT: Mr. Peled, I'm going ahead and
8 deciding who does it belong to, is the property of the
9 estate or not. It has been a gating issue in this case from
10 day one. I don't believe that that's an issue that the
11 examiner is addressing. It's not within the scope of the
12 examination. I understand Ms. Cornell, Ms. Cordry, you
13 saying, well they don't have to sell it now. Now I will
14 deal with the issue of whether to approve the sale, but the
15 gating issue, I am going to decide now. It's ripe. It's
16 been every -- on everybody's table right from day one, is
17 property the estate. Do you have anything you want to add
18 on that issue?

19 MR. PELED: Yes, thank you, Your Honor. I just
20 wanted to touch on the fact that the determination of
21 whether or not it is property of the estate, and that's what
22 I'm getting at, is based on the terms of use and the Ponzi
23 investigation will -- may determine that the terms of use
24 are not enforceable, not valid.

25 THE COURT: Are you saying that -- are you saying

1 it's been a Ponzi scheme from day one, Mr. Peled?

2 MR. PELED: No, I'm saying we don't know. That's
3 what I'm saying. I'm saying we may find out in three weeks
4 or in a month, not in an indefinite time, but actually --

5 THE COURT: I have that point.

6 MR. PELED: -- short time. Okay.

7 THE COURT: Are there any other -- are there any
8 other points you want to make?

9 MR. PELED: The only point we wanted to make that
10 -- if the case is determined to be a Ponzi scheme which Your
11 Honor already has, it would have a substantial effect on the
12 rest of this case and that's why we ask Your Honor to wait
13 until the examiner's report, but I understand Your Honor
14 already has that point.

15 THE COURT: Okay. All right. Is there anybody
16 else who wishes to be heard in support of their objection?

17 MS. SHEA: This is Virginia Shea on behalf of the
18 New Jersey Bureau of Securities, from the law firm of
19 McElroy, Deutsch and I just wish to correct the record. The
20 Bureau submitted a response at Docket No. 1498. Thereafter,
21 the Debtors submitted a reply at Docket No. 1578. And
22 attached to that reply is an Exhibit A which summarizes all
23 of the various objections that have been filed and there's
24 just two incorrect summaries within that exhibit as to the
25 Bureau's filing.

1 First, the Debtor stated that the Bureau took no
2 position as to ownership of Earn assets. That is not
3 correct. In the Bureau's response, it stated, "The Bureau
4 currently takes the position that the Earn assets are
5 customer property."

6 And the second correction is that the -- they
7 purport that the Bureau asserted that the Earn Program was
8 operated after the cease and desist order that had been
9 issued by the Bureau, but the Bureau did not assert this in
10 the response. Rather, the Bureau simply stated "The Debtors
11 operated and marketed the Earn Program while violating New
12 Jersey's securities law."

13 THE COURT: Ms. Shea, can you just give me the ECF
14 docket number of your filing?

15 MS. SHEA: Yes. Our filing ECF is 1498.

16 THE COURT: Okay, thank you very much. Is there
17 anything else you want to add?

18 MS. SHEA: Just that we join with the State of
19 Texas' position.

20 THE COURT: Thank you, Ms. Shea. Anybody else who
21 wishes to be heard in support of an objection?

22 MR. CREWS: Yes, Your Honor. Can you hear me?

23 THE COURT: Yes.

24 MR. CREWS: My name is Cameron Crews, pro se
25 creditor, and in order for ownership of our assets to be

1 surrendered, what we received in consideration was the
2 opportunity to earn yield. But what the Debtors did not
3 disclose to us was that they were not earning yield with the
4 resources provided to them. They were a failed venture.
5 They did not disclose that to us; therefore, we never had
6 the opportunity to actually earn.

7 We now sit here today having lost half of our
8 assets that we entrusted to them and Your Honor has said
9 that they would go to jail if they were to spend the
10 approved assets in Vegas. I would say that would be a
11 better use of our assets because we at least have a chance
12 of winning. This company has never been profitable.
13 They've never established any reliable streams of revenue.
14 They've just lost money entrusted to them. And the fact
15 that they have not produced a plan now five-and-a-half
16 months later is indicative that they don't have reliable
17 revenue streams and we the creditors have entrusted our
18 funds to them.

19 They have lost all resources entrusted to them
20 except for the remaining creditor funds. We just want
21 what's left back in an equitable way and we believe the UCC
22 for administrative expediency has taken the position that
23 the Debtor has ownership of our assets. We vehemently
24 object to that, but if it's what's needed to protect our
25 interests, then fine. But we feel at least in terms of a

1 procedural sense, it would be a terrible precedent if
2 ownership of our assets was taken away from us but we've
3 received nothing in return. Thank you, Your Honor.

4 THE COURT: Thank you, Mr. Crews. Anybody else
5 want to be heard in support of their objections?

6 MS. FRANKEL: Can I be heard? This is Deborah
7 Frankel. I'm a creditor.

8 THE COURT: Sure, go ahead, Ms. Frankel.

9 MS. FRANKEL: Hi. I just want to say that, you
10 know, I can't even believe that nobody submitted all the
11 videos of the AMAs, where Alex was saying there are coins,
12 there are coins, there are coins at every time and everybody
13 submitted tons of those videos at the beginning of this
14 bankruptcy. I would have thought that you would have read
15 them or you know, listened to them and watched them and seen
16 what's really been going on here. It's not just 40 people
17 objecting. I don't even know how to make an objection.

18 I have a ton of money in there and this whole
19 thing is just unbelievable. And that technicality that
20 nobody submitted those videos right at this time, when -- is
21 amazing. I mean, I'm surprised that nobody did, but I
22 didn't know that rule and I saw tons of them going through
23 there. I thought you were aware of them. I thought this
24 was a slam dunk case of, you know, the Earn stuff belongs to
25 us because some little thing in the terms and conditions on

1 the 39th page, you know, said something where (audio drops)
2 every week to us that they were our coins.

3 I just needed to say that among the other things,
4 and there are hundreds of thousands of us that are
5 incredibly upset about this whole thing, you know. So --

6 THE COURT: Thank you, Ms. Frankel. Anybody else
7 wish to be heard?

8 MR. PORTER: I would, Your Honor, if it's all
9 right.

10 THE COURT: Go ahead, Mr. Porter.

11 MR. PORTER: Good day. You know, I hear loud and
12 clear that the terms of service were a checkmark for all of
13 us to do and the changes were certainly not apparent to
14 anybody. And if I could go to another industry where you
15 buy cigarettes and there's warnings on the box, the
16 president, the CEO, the head of Philip Morris doesn't come
17 out and say, oh, ignore what's on the side of the box and
18 basically for all intents and purposes this is what this
19 company was doing every week on a weekly basis, right up
20 until the day of the filing, sir.

21 They were soliciting funds to the day of the
22 filing, the CEO of this company. Thank you very much, Your
23 Honor.

24 THE COURT: Thank you, Mr. Porter. Anybody else?
25 Mr. Herrmann, I saw you briefly on the screen. Do you wish

1 to speak?

2 MR. HERRMANN: Yes, Your Honor. This is Immanuel
3 Herrmann, pro se creditor. So I'll start out by just
4 respectfully asking if you would consider reopening the
5 opportunity to submit evidence. Many of us have submitted
6 declarations, sworn declarations. There's a lot in the
7 record. We only had essentially 30 seconds to submit
8 anything into the record.

9 THE COURT: I'm not reopening the record, Mr.
10 Herrmann. That's what this hearing was about. I understand
11 that you're a pro se creditor and there are many other pro
12 se creditors. But I follow the rules. Evidence was
13 submitted in support and that's where we are. Anything you
14 want to add?

15 MR. HERRMANN: Yes, I have things about my
16 objection that are, you know, just from the filing itself
17 and the contract itself. So, you know, one, I just wanted
18 to note that all of the -- I would say pretty much every pro
19 se creditor knows there aren't enough coins there. We
20 differ with the UCC or at least I do. You know, I differ
21 with the UCC on the idea that, you know, it guarantees us
22 maximum recovery to be property of the estate because
23 fundamentally we don't trust the Debtor nor the UCC to drive
24 a process that will maximize value for creditors.

25 And so part of this has been trying to ensure that

1 value is maximized for creditors. Nobody -- there's a lot
2 of implications in these filings that creditors somehow
3 believe they're going to get 100 percent back if our coins
4 are not property of the estate. Nobody thinks that. What
5 we do think is that it's profoundly unfair for some groups
6 to fight for 100 percent back and specifically, there's many
7 cases -- we were talking earlier in this hearing about, you
8 know, situations about contractual defenses and all that.
9 There's many people where there's a label of Earn on their
10 account, which may have been completely in violation of the
11 plain contract terms, for example, and that are similar to
12 withhold.

13 So any kind of sweeping ruling that would limit
14 any kind of those defenses, if we go down the property
15 rights rabbit hole, which, you know, I was hoping we
16 wouldn't do it this way, but I feel like it's going to be
17 difficult no matter how the ruling goes because if it is
18 property of the estate, I don't think there can be a
19 sweeping determination based on the contracts that every
20 user, you know, is similarly situated.

21 There are many, many claims, suspended accounts,
22 my claim for return to collateral, et cetera. That's a
23 whole rabbit hole. So that's coming, if we get a ruling
24 that the coins are generally property of the estate. So
25 that's one thing I wanted to note.

1 You know, another thing, a point I made in my
2 argument, in my filing, is that the Debtor had a sale and
3 repurchase agreement or a repo agreement in the United
4 Kingdom. So they were familiar with that sort of agreement.
5 They cannot argue that they couldn't have structured it that
6 way. They were intimately -- their counsel clearly was
7 familiar with it. They made a choice to call it a loan,
8 distinct from a repo agreement.

9 And so there's a lot of complicated technical
10 arguments I saw about whether you can have a loan. You
11 know, they were saying maybe in a securities context, maybe
12 in some others, but I wanted to correct the record around my
13 arguments around a car. They mischaracterized in their
14 reply, you know, car -- you know, my argument around it's,
15 you know, like loaning your car. What I have said is, look,
16 the only way to do this with a car would be a repo agreement
17 and generally cryptocurrency, particularly Bitcoin, is
18 property.

19 So they decided to call it a loan and not do a
20 repo agreement. I don't know why. Maybe it was for tax
21 purposes or whatever, but it created ambiguity. There's
22 lots of ambiguities that have come up. That's just one
23 example of ambiguity. I agree with Ms. Mulligan, Ms.
24 Cordry. I fully join in all of their arguments just for the
25 record that a creditor does. You know, and I think there's

1 -- you know, there's also just, I think that there's
2 potentially issues with ipso facto clauses here that were
3 mischaracterized as individual defenses.

4 I don't see how a creditor as an individual
5 defense could raise something like an ipso facto clause in
6 the contract. That seems to me a global defense for the
7 entire contract. So I just think there's a lot of
8 corrections that probably need to be made to the response
9 that the Debtor filed. And yeah, I mean, you know, I just
10 also want to note that, you know, the timeline here was just
11 extraordinarily rushed. I mean, we're all doing our best,
12 but there's a lot that we were not able to get into our
13 filings or to ask the Debtor about and even just based on
14 the contract itself it's not, you know, in my view clear and
15 unambiguous. Like that's -- period, bottom line.

16 And you know, one other thing I'll state is that
17 I'm really stunned that regulators are not in touch with the
18 Debtor and I will be filing a motion for the appointment of
19 a Chapter 11 mediator today, so when we have a recess or
20 something, I'll get that in and serve it and email it to
21 chambers. But I think that, you know, I think that
22 regardless of how you rule it will not quell my dissent or
23 creditor dissent and grave concerns about this process.

24 THE COURT: Thank you, Mr. Herrmann. Anybody else
25 wish to be heard?

1 MR. DeGIROLAMO: Yes, Your Honor, Tony DeGiolamo,
2 just briefly please.

3 THE COURT: I only allow somebody to speak once
4 during this, so I've already heard from you.

5 MR. DeGIROLAMO: And I questioned a witness. I
6 didn't close, Your Honor.

7 THE COURT: All right. Go ahead, Mr. DeGiolamo.
8 Go ahead.

9 MR. DeGIROLAMO: Thank you, Your Honor. I mean, I
10 obviously know that you've read all the briefs. I'm not
11 going to rehash the whole ambiguous contract argument that
12 I've made on behalf of my client. And I also don't want to
13 rehash, you know, all of the arguments about the use of the
14 funds and whether or not they're going to be able to
15 repurchase Stablecoin at some point in the future.

16 THE COURT: So rather than telling me what you're
17 not going to repeat, tell me what you want to tell me that I
18 haven't heard already.

19 MR. DeGIROLAMO: That's fine, Your Honor. The one
20 thing that I haven't heard and I appreciate Your Honor's
21 desire for an equitable distribution in this case. That is
22 the basis for bankruptcy. And I understand that this is a
23 gateway to plan confirmation, but the one thing I haven't
24 heard anyone speak to is the deficiencies in the Debtors'
25 operation identified by the examiner, the move --

1 indiscriminate moving of coin from one wallet to another to
2 cover shortfalls or if there are overages, move it from one
3 wallet to another.

4 And it seems to me that if there's going to be
5 anything for this Debtor to sell or anything for this Debtor
6 to reorganize around, that deficiency must be remedied.
7 They can't continue to operate the way they did before
8 bankruptcy case was filed. And so to me that's supposed --

9 THE COURT: Mr. DeGirolamo --

10 MR. DeGIROLAMO: -- no one spoke to.

11 THE COURT: Mr. DeGirolamo.

12 MR. DeGIROLAMO: Yes, sir.

13 THE COURT: This is a hearing to determine the
14 ownership of the Earn assets. There may be another time to
15 address the deficiency in their operations.

16 MR. DeGIROLAMO: That's fine, Your Honor. As I
17 said, there was as much testimony about what the money was
18 going to be used for as whether or not it was owned by the
19 Debtor, so it appeared to me that these issues were fair
20 game for today. With that, I don't have any other comments.

21 THE COURT: All right. Anybody else wish to be
22 heard?

23 MR. GEORGIU: Yes, Your Honor. May I speak?

24 THE COURT: And who is that?

25 MR. GEORGIU: This is George Georgiou, pro se

1 creditor.

2 THE COURT: Yes, please, go ahead.

3 MR. GEORGIU: Thank you very much. I have a
4 Docket No. 1517. I want to ask, if the Court determines
5 today that the terms of use are adequate to be used, then I
6 have a case where I withdrew my (indiscernible) pre-pause
7 and pre-filing of Chapter 11, passed all the KYC, I passed
8 all the verifications. I've got emails from Celsius saying
9 that my withdrawal was initiated. This was all done under
10 Section 11 of the terms of use where I basically exercised
11 my call option to withdraw my funds. At that time, I
12 stopped receiving any earn and I was put on -- in a pending
13 situation until October 6th where they canceled me back into
14 Earn.

15 I was only in Earn for five hours for the entire
16 four months and I didn't receive but \$3 of earn on a million
17 dollars of assets. So how -- am I going to be now in Earn
18 or am I part of the estate? I don't know how the Debtor is
19 going to treat me. Following the terms of use, am I part of
20 the estate or not?

21 THE COURT: May I ask you this?

22 MR. GEORGIU: Sure.

23 THE COURT: Are you listed in the schedules as a
24 creditor? And if so, in what amount?

25 MR. GEORGIU: I'm listed in Earn for the amount

1 of about 26.5 Bitcoins.

2 THE COURT: Okay, I can't -- I'm not sure that I -
3 - there's no response that I can give. I understand --

4 MR. GEORGIU: Right.

5 THE COURT: -- the issues you're raising.

6 MR. GEORGIU: I mean --

7 THE COURT: Is there anything else you'd like to
8 add?

9 MR. GEORGIU: No, I just want to put it there and
10 I just reserve my right later to like file an objection or,
11 I don't know, some kind of motion.

12 THE COURT: Okay.

13 MR. GEORGIU: Thank you very much.

14 THE COURT: Thank you very much. Anybody else who
15 wishes to be heard?

16 MR. FRISHBERG: Yeah, Daniel Frishberg, pro se.

17 THE COURT: Go ahead, Mr. Frishberg.

18 MR. FRISHBERG: I agree with everything that the
19 regulators have stated. I believe this is an improper
20 attempt to claim all of Earn assets and I do -- as Mr.
21 Herrmann mentioned, I do have some serious concerns about
22 the whole very rushed timeline for the depositions and the
23 discovery process. I do not believe there was sufficient
24 discovery to rule on Earn as I believe Mr. Ignat Tuganov's
25 attorney stated, there is potential that Celsius is a Ponzi

1 scheme and I do believe that it is worth investigating
2 because if it was a Ponzi scheme, the contract is
3 unenforceable and illegal.

4 And in that case, I believe that would not be
5 property of the estate, and to preemptively rule it is not
6 good, especially for a sale of assets because nobody wants
7 to buy the sale of assets with the potential for a clawback
8 due to a Ponzi. I do not think it's in creditors' best
9 interest to rush this. While costs are a major concern, it
10 may be a bit better to just wait a month for the examiner's
11 report which we already paid approximately \$10 million for
12 to come out so we can determine what exactly went on at
13 Celsius and if it is even a Ponzi scheme or if it's not a
14 Ponzi scheme.

15 I do believe that the proper method for attaining
16 Earn assets for everyone to determine if Earn assets are
17 property of the state is a adversary proceeding. I believe
18 it's Rule 7000 something. Regulators mentioned that.
19 Custody and withhold for much smaller amounts, I believe
20 like 15 million and like 50 million or whatever are having
21 adversary proceedings while roughly a billion and a half
22 dollars in Earn assets is being rushed through some very
23 (audio drops) lack of deposition process on a short timeline
24 that is basically trying to just shove it in under the wire,
25 which in my opinion is a major due process issue. Thank

1 you. That is all.

2 THE COURT: Thank you, Mr. Frishberg. Anybody
3 else wish to be heard?

4 MS. GALLAGHER: Yes, I would wish to be heard.

5 THE COURT: Go ahead.

6 MS. GALLAGHER: Okay, so my name is Rebecca
7 Gallagher and I'm a pro se creditor. You mentioned, Judge,
8 that you've never listened to any of Mashinsky's videos, so
9 I have one queued up here to play to you which will just
10 give you --

11 THE COURT: I'm sorry -- no. Ms. Gallagher, the
12 evidence is closed. I'm not reopening the evidence. There
13 may be some other issue in this case where that becomes
14 relevant, but I deal with the record that's made.

15 MS. GALLAGHER: This is --

16 THE COURT: Ms. Gallagher.

17 MS. GALLAGHER: Right, this is on --

18 THE COURT: Ms. Gallagher, do not --

19 MS. GALLAGHER: Yes?

20 THE COURT: -- play the video.

21 MS. GALLAGHER: Okay, Your Honor.

22 THE COURT: You will be cut off. You will be cut
23 off from the Zoom if you do.

24 MS. GALLAGHER: Okay, Your Honor. It is on a
25 docket, though, Docket 1559.

1 THE COURT: What is 1659?

2 MS. GALLAGHER: Sorry, the video is at the --

3 THE COURT: Okay.

4 MS. GALLAGHER: -- end of docket --

5 THE COURT: It wasn't introduced into evidence
6 today during this hearing. If there's any points you want
7 to make about the evidence that came in or the arguments
8 that have been made, now is the time to do it. The
9 evidence, the record is closed and I'm not going to hear any
10 additional evidence.

11 MS. GALLAGHER: Okay, Your Honor.

12 THE COURT: Does anybody else wish to be heard?

13 MR. LINDSAY: Yes, Your Honor. Your Honor, Mark
14 Lindsay for several Earn account holders, Stuart McLean,
15 Keith and Jennifer Riles. Your Honor, I've obviously heard
16 all the other objectors' arguments and I will do my best not
17 to rehash anything and will rest on our pleadings in that
18 regard for arguments, but I did want to point out, Your
19 Honor, that I found it surprising that to me, my
20 understanding was the main gate keeping issue for today's
21 hearing was a determination of whether or not these terms of
22 use were clear and unambiguous.

23 And the Debtor set this hearing up to be based on
24 that finding, and quite frankly, unless I'm mistaken, I
25 heard very little about that issue today. The Debtors argue

1 and the evidence that they put on today was basically
2 regarding the acceptance of the terms of use, who accepted
3 what version, how many people accepted the versions. What
4 they don't talk about is, so what was accepted.

5 THE COURT: I think they did --

6 MR. LINDSAY: And there's no record.

7 THE COURT: Excuse me, Mr. Lindsay. There was
8 what is ECF Docket No. 393, the Exhibits A-1 through A-8, is
9 a binder with all of the terms of use. They were all filed
10 as an exhibit to a Mashinsky declaration which was ECF
11 Docket No. 393.

12 MR. LINDSDAY: Yes, Your Honor.

13 THE COURT: And so part of the evidentiary record
14 today is each and every version of the terms of use or Earn
15 accounts that was introduced in evidence today, I have that.
16 The briefs are addressed to the issue of what -- issues
17 whether the terms of use were clear and unambiguous. I'm
18 taking the matter under submission. I'm not deciding the
19 matter from the bench today, but all of that is in evidence
20 and that was the main thrust of both the Debtors' brief, the
21 Committee's was styled as a limited objection, and so that
22 is the central focus of what I've been being asked to
23 decide.

24 MR. LINDSAY: Understood, Your Honor, and I'm
25 aware that all of the terms of use are of record, including

1 red lines. The point I was making is that although it was
2 brought up today that there's -- that there is in fact, and
3 it's been pled at length by the objectors, conflicting
4 language in those terms of use, there was no attempt to
5 reconcile by the Debtors, you know, why that, despite that
6 conflicting language, why those terms are still clear and
7 unambiguous in each, regardless of which terms of use or
8 which version is adhered to, why all of the Earn account
9 users should be held to their version of it, given the
10 distinctly different language and interpretations that can
11 come from that very language.

12 THE COURT: The Debtors --

13 MR. LINSLEY: And I'll leave it at that.

14 THE COURT: The Debtors' position is that each of
15 the account holders, current account holders are subject to
16 Version 8, the last version and that each of the terms, each
17 version indicated that it could be updated. That's not the
18 exact language, but their argument is that eight -- Version
19 8 is the applicable version. Obviously there's been a lot
20 of discussion, briefing, and evidence about what have been
21 the changes in the language of each successive version. I
22 asked some questions about that myself. So thank you, Mr.
23 Lindsay.

24 Anybody else wish to be heard? All right, hearing
25 no one, does the Debtor wish to reply, respond?

1 MR. NASH: Pat Nash from Kirkland and Ellis for
2 the Debtors. Not unless Your Honor has any questions.

3 THE COURT: No, I don't. Mr. Colodny?

4 MR. COLODNY: Not unless you have any questions,
5 Your Honor.

6 THE COURT: The Court is going to take the matter
7 under submission. We've got a busy week, so it won't be
8 this week, I don't think, when the Court rules on it, but I
9 have in mind the issues and the arguments. Thank you very
10 much. The Court is in recess for a half hour.

11 MR. NASH: Your Honor, is it okay for those of us
12 who --

13 THE COURT: Yeah, we're doing -- it's Zoom. Go
14 ahead, Mr. Nash. I cut you off. Are you going to stay here
15 for --

16 MR. NASH: It'll be a lot easier for us.

17 THE COURT: You absolutely can.

18 MR. NASH: Thank you, Judge.

19 MR. COLODNY: Thank you, Your Honor.

20 THE COURT: Okay. All right.

21 (Recess)

22 CLERK: All right. Starting the recording again
23 for December 5, 2022 at 2 p.m. calling the following cases.
24 Celsius Network LLC case number 22-10964; Celsius Network
25 Limited, et al v. Stone, et al, case number 22-1139; and

1 Celsius Network Limited, et al v. Prime Trust, LLC, case
2 number 22-1140. All right. Are any of the -- we'll just
3 keep the appearances for this morning's hearing. Are there
4 any parties that are here for either of the adversary
5 proceedings?

6 MR. ROCHE: Yes, Kyle Roche on behalf of
7 Defendants KeyFi and Jason Stone.

8 CLERK: Okay. Thank you, Kyle. Anyone else
9 that's making an appearance for this afternoon's hearing and
10 did not make an appearance this morning?

11 MAN: Good afternoon.

12 WOMAN: Yes, my name is --

13 CLERK: Okay. Let's do it this way. If you could
14 raise your hand one at a time, and I'll just take each
15 appearance in turn. All right. Mr. Adler, are you
16 appearing also for this afternoon's hearing?

17 MR. ADLER: Yes, Deanna. I'm appearing. David
18 Adler on behalf of certain borrowers from McCarter and
19 English. And I will be speaking briefly with respect to
20 exclusivity.

21 CLERK: Okay. Thank you. Ms. Gallagher, are you
22 appearing for the afternoon hearing as well?

23 MS. GALLAGHER: I am just listening.

24 CLERK: Okay. All right. Thank you. All right.
25 Mr. Leblanc?

1 MR. LEBLANC: Yes. Good afternoon. Andrew
2 Leblanc of Milbank on behalf of certain Series B preferred
3 holders, including Community First. And I may speak at this
4 afternoon's hearing.

5 CLERK: Okay. Thank you. Trudy Smith?

6 MS. SMITH: Hi. Yes. Sorry. My video's not
7 working. But yes, I am here on behalf of the Committee and
8 the Prime Trust adversary.

9 CLERK: Okay. Thank you. Mr. Steel?

10 MR. STEEL: Hey, good afternoon. Howard Steel,
11 Goodwin, on behalf of Prime Trust.

12 CLERK: Okay. Thank you. Deborah Kovsky?

13 MS. KOVSKY: Good afternoon. Deb Kovsky, Troutman
14 Pepper on behalf of the Ad Hoc Group of Withhold Account
15 Holders. I'm just speaking on the exclusivity motion.

16 THE COURT: Okay. Thank you. Mr. Dean Chapman?

17 MR. CHAPMAN: Yeah. Good afternoon. Dean Chapman
18 from Akin Gump Strauss Hauer and Feld on behalf of the
19 Debtors in the adversary proceedings.

20 CLERK: Okay. Thank you. Mr. De Las Heras?

21 MR. DE LAS HERAS: (Indiscernible) De Las Heras,
22 pro se creator. I'll be speaking on the (indiscernible)
23 motion.

24 CLERK: Okay. Elizabeth Scott?

25 MS. SCOTT: Good afternoon. Elizabeth Scott with

1 Akin Gump on behalf of the Celsius Plaintiffs in the two
2 adversary proceedings.

3 CLERK: Okay. All right. Catherine?

4 MS. STADLER: Yes. Katherine Stadler of Godfrey
5 and Kahn appearing on behalf of the fee examiner.

6 CLERK: Okay. Thank you. And I see Mr. Lazar is
7 on as well.

8 MS. STADLER: Mr. Lazar represents the examiner.

9 CLERK: Oh, I'm sorry. Yes. Okay. Sorry to go
10 out of order. You know what? Mr. Lazar, go ahead and make
11 your appearance.

12 MR. LAZAR: Thank you. Vincent Lazar, Jenner and
13 Block on behalf of the examiner. I believe that the
14 examiner is (indiscernible).

15 CLERK: I'm sorry. I had to mute the courtroom.
16 Go ahead, please.

17 MR. LAZAR: Vincent Lazar, Jenner and Block on
18 behalf of the examiner, who is also on.

19 CLERK: Okay. Thank you. And then, Ms. Pillay, I
20 think I see you there.

21 MS. PILLAY: Yes. Good afternoon. Shoba Pillay,
22 the examiner from Jenner and Block. Thank you.

23 CLERK: All right. Thank you. Mr. Herrmann?

24 MR. HERRMANN: Yes, sorry. I was muted. Immanuel
25 Herrmann, pro se Creditor. I will be speaking on

1 exclusivity.

2 CLERK: All right. Thank you. All right. Callie
3 Swolier? Is that correct?

4 MS. SWOLIER: It's Swolier. I'm just listening.

5 CLERK: Okay. Thank you. All right. Mitch
6 Hurley?

7 MR. HURLEY: Yeah. Good afternoon. Mitch Hurley
8 with Akin Gump on behalf of Celsius.

9 CLERK: Okay. Chris?

10 MR. SONTCHI: Hi, Chris Sontchi, fee examiner.

11 CLERK: Okay. Thank you. James Lathrop?

12 MR. LATHROP: Good afternoon. James Lathrop also
13 counsel for Prime Trust.

14 CLERK: All right. Thank you. Is that everyone
15 that's on the phone? Is there anyone else on the phone
16 that's going to be appearing at this afternoon's hearing and
17 has not given their appearance?

18 MR. COOK: No, this is Lafayette Cook. I just
19 will be listening.

20 CLERK: Okay. That's fine. Thank you. All
21 right. Are the parties back in --

22 MS. BARR: Hi, this is --

23 CLERK: Yes, go ahead.

24 MS. BARR: I'm sorry. This is Christina Barr on
25 behalf of Celsius for Lathman Watkins, and I will just be

1 listening.

2 CLERK: Okay. That's fine. If you're listening,
3 there's no need to identify yourself.

4 MS. BARR: Oh, my apologies.

5 CLERK: It's just --

6 MS. BARR: Thank you.

7 CLERK: No, no reason to apologize. I know it's
8 very confusing. Just if you're going to be speaking on the
9 record this afternoon. All right. For the parties that
10 have joined on Zoom, please one at a time please raise your
11 hands if you're going to be speaking on the record this
12 afternoon. Kyle Roche. All right. I see you lowered your
13 hands. And are you going to be speaking on the record this
14 afternoon?

15 MR. ROCHE: Yes.

16 CLERK: Okay. Just identify your -- state your
17 appearance for the record.

18 MR. ROCHE: Yes. Kyle Roche on behalf of
19 Defendants KeyFi and Jason Stone.

20 CLERK: Okay. Thank you. Josephine Gartrell?

21 MS. GARTRELL: Hello. It's Josephine Gartrell,
22 Willis Towers Watson. I entered my appearance this morning
23 but wasn't clear if I still needed to do it again this
24 afternoon, but I will be speaking on the record.

25 CLERK: All right. Thank you.

1 MS. GARTRELL: Thank you.

2 CLERK: All right. Katherine?

3 MS. STADLER: Yes, Katherine Stadler, Godfrey and
4 Kahn on behalf of the fee examiner. I will speak only if
5 the judge has questions on uncontested matter number 5.

6 CLERK: Okay. Thank you. All right. Any
7 additional parties that have joined the hearing and are
8 speaking on the record this afternoon and have not given
9 their appearance? Please raise your hand. Okay. Are the
10 parties in the courtroom back? All right. I'm going to
11 pause the recording for now. If anyone is going to be
12 speaking this afternoon and has not given their appearance
13 yet, please raise your hands and I'll take your appearance
14 one at a time.

15 MR. FRISHBERG: Daniel Frishberg, pro se.

16 CLERK: Thank you. Is there anyone else?

17 MS. MILLIGAN: This is Layla Milligan. I don't
18 have argument for this afternoon. I just wanted to note my
19 appearance on the record.

20 CLERK: Okay. Thank you.

21 MS. MILLIGAN: Thank you.

22 MR. FRISHBERG: Daniel Frishberg again. I have a
23 quick question. On the agenda, it says that we're going to
24 be having the current motion first and then the motion to
25 shortened notice on the current motion afterwards.

1 Shouldn't we be having the shortened notice motion first?

2 CLERK: Well, that's the judge's call as to what
3 order he wants to go in.

4 MR. FRISHBERG: Okay. Thank you.

5 CLERK: I am not certain of that. Hi. Can the
6 parties hear me in the courtroom?

7 MAN: (Indiscernible).

8 CLERK: Oh, you have to go accept. Can the
9 parties hear me now in the courtroom?

10 MR. KWASTENIET: Yes, this is Ross Kwasteniet from
11 Kirkland. Can you hear me?

12 CLERK: Yes, I can, Ross. Do we have the same
13 appearances from this morning, or do we have additional
14 appearances in the courtroom? If the parties can come up
15 and just give their appearances.

16 MR. KWASTENIET: Yes. I wanted to note Patrick
17 Nash and Ross Kwasteniet from Kirkland and Ellis as
18 presenters for the 2:00 hearing.

19 CLERK: Okay. Thank you.

20 MR. KWASTENIET: Also, Your Honor, Mr. TJ
21 McCarrick from Kirkland may present if we need to put on
22 witnesses and the same witness Grace Brier.

23 CLERK: Okay. So TJ McCarrick is the party that I
24 need to make a co-host? Is that correct? To present
25 something.

1 MR. KWASTENIET: No, I think that we don't need to
2 present. We don't plan to use the screen, so I don't --

3 CLERK: Okay.

4 MR. KWASTENIET: -- think we need co-host
5 privileges, but thank you.

6 CLERK: Thank you. All right. Any additional
7 parties in the courtroom that need to make an appearance?
8 All right. Last call for appearances. Anyone else need to
9 make an appearance, please do so at this time. We're going
10 to get started. All right. I am going to assume that we
11 are ready to go.

12 Please keep it -- please listen to the following
13 announcements. All parties are strictly prohibited from
14 making any recording of court proceedings whether by video,
15 audio, screenshot or otherwise. Violation of this
16 prohibition may result in the imposition of monetary and
17 non-monetary sanctions. CLERK of the court maintains an
18 audio recording of all proceedings, which constitutes the
19 official record. Parties must state their name each time
20 they speak on the court record. A party must join with a
21 full first and last name to be admitted from the waiting
22 room. Parties that join with initials, a partial name, a
23 designation of iPhone, etcetera, will not be admitted.

24 THE BAILIFF: All rise.

25 THE COURT: Please be seated. All right. Good

1 afternoon. I know that this hearing was intended initially
2 to be entirely by Zoom, but we didn't get finished with the
3 morning very early so we'll go forward with it. The agenda
4 for this afternoon, the second amended agenda for the
5 hearing to be held at 2:00 is filed as ECF Docket Number
6 1596.

7 MR. KWASTENIET: Good afternoon, Your Honor. For
8 the record, it's Ross Kwasteniet from Kirkland and Ellis on
9 behalf of the Debtors. We appreciate you accommodating the
10 use of your courtroom this afternoon. I think many of us
11 would've still been probably on the subway trying to get
12 back to our offices, so appreciate that.

13 Your Honor, before I jump into the agenda, if I
14 may, I just have one announcement to make, and it goes in
15 the nature of a public service announcement. But the
16 Debtors have become aware of a sophisticated phishing scam
17 that appears to be targeting Celsius customers. At this
18 point, we're not aware of any customers having fallen a
19 victim to this scam, but if that is your situation, we would
20 like to hear from you.

21 We did file a notice, Your Honor, at Docket Number
22 1527 that includes details about the scam and the two known
23 or confirms forms of email that these fraudsters appear to
24 be using to target customers. We've been in very active
25 dialogue with the Office of the United States Trustee, and

1 we appreciate their responsiveness. And they've also
2 referred us to and put us in touch with the United States
3 Attorney's Office for the Southern District, and we are
4 collectively investigating and are in touch.

5 So to the extent there are additional developments
6 on that front, Your Honor, we will let you know. But the
7 important thing to get out, and we included this message
8 within the notice that we filed, is, you know, all
9 customers, we'd like them all to hear that neither the
10 Debtors or their advisors will contact customers directly by
11 phone, email, or otherwise and ask them to provide personal
12 information or account information.

13 We may ask that people log into their app. That
14 would be a secure method of communication, but we are not
15 going to be asking you to verify or provide account details
16 or personal information. And customers should be on notice
17 that people are out there seeking that information, and it's
18 illicit, and it's not coming from the Debtor. So I just
19 wanted -- for whoever's been listening, Your Honor, I wanted
20 to start with that.

21 THE COURT: I appreciate you putting that on the
22 record, and we have a lot of people signed in today to hear,
23 so...

24 MR. KWASTENIET: Great. Your Honor, turning to
25 the first set of motions on the agenda, they relate to the

1 Debtor's key employee retention plan. There were three
2 motions specifically, a motion to shorten notice, a motion
3 to seal, and then an amended motion to approve the KERP.
4 The amended motion was filed at Docket Number 1426, Your
5 Honor, and it supplements and amends an original order filed
6 back on October 11 of this year at Docket Number 1021.

7 Your Honor, I will note that as a gating matter,
8 one of the objections, the Mr. Frishberg objection, as I
9 read it, Your Honor, doesn't relate to the substance of the
10 KERP so much as it does to the timing and the request to
11 expedite. And as he made his appearance, he asked or
12 suggested that maybe the Motion to Expedite be taken up
13 first as a gating matter, which I'm happy to follow Your
14 Honor's preference. I'm certainly happy to make a few
15 remarks on the Motion to Expedite.

16 THE COURT: That's unnecessary because I invited
17 an expedite hearing on the KERP. It was specifically at my
18 urging that that was done. So the motion to shorten time,
19 ECF 1429 is granted.

20 MR. KWASTENIET: Thank you, Your Honor.

21 THE COURT: So let me ask Ms. Cornell with respect
22 to the ceiling motion, do you have an objection to the
23 ceiling motion? The ceiling motion is Number 2 on the
24 agenda. It's ECF 1425. There were no responses that were
25 filed, but I just --

1 MS. CORNELL: Only insofar as the redactions
2 pertained to our objection and the information on the
3 evidentiary record.

4 THE COURT: I don't understand what you just said
5 -- told me. Why don't you go up to the microphone if you
6 would?

7 MS. CORNELL: Good morning, Your Honor. Shara
8 Cornell on behalf of the Office of the United States
9 Trustee. We filed our objection to the KERP ad filed at
10 1426 and the motion to file under CLF 1425 in this case. I
11 don't think I need to repeat what's in the objection, but
12 insofar as the evidentiary basis provided by the Debtors
13 today is insufficient because of those redactions. The
14 United States Trustee objects to the motion to seal.

15 THE COURT: Okay.

16 MS. CORNELL: Thank you.

17 THE COURT: All right. The objection to the
18 motion to seal is overruled. There were -- and so the
19 motion to seal is granted.

20 MS. CORNELL: Thank you, Your Honor.

21 THE COURT: All right. Thank you.

22 MR. KWASTENIET: Thank you, Your Honor. I think
23 that leaves us with two objections to the revised KERP
24 motion. The U.S. Trustee's objection relates primarily to
25 the adequacy of the record that we've made. And Your Honor,

1 one of the U.S. Trustee's objections, which was filed at
2 Docket 1551, is that there is simply not enough information
3 to tell what each participant does or what division of the
4 company they are in.

5 And that may be true with respect to this -- the
6 body of the motion itself, which speaks in some
7 generalities. But there was an exhibit to the motion, Your
8 Honor, that was specifically incorporated in the amended
9 declaration of Mr. Ferraro that goes through on an employee-
10 by-employee basis, what exactly their function is at the
11 company, and what division of the company they work in.

12 And so, Your Honor, this might be a good time for
13 me to move into evidence the two declarations that we have
14 filed in support of the motion, and those are the
15 supplemental declaration of Mr. Ferraro, who's in the
16 courtroom today, which is filed at Docket Number 1427, and
17 the supplemental declaration of Ms. Josephine Gartrell,
18 who's from the Willis Towers Watson firm, which was filed at
19 Docket Number 1428. She is on the line and available to the
20 extent that anybody has cross-examination questions for
21 either one of them.

22 THE COURT: All right. Let me ask are there any
23 objections to the supplemental Ferraro declaration ECF 1427.
24 Hearing no objection, it's admitted in evidence. Are there
25 any objections to the Gartrell declaration ECF 1428?

1 Hearing none, it's admitted in evidence as well.

2 MR. KWASTENIET: Thank you very much, Your Honor.

3 So I'll continue walking through our response to the
4 objections. The U.S. Trustee's first objection about not
5 being able to tell what people do and what division we're in
6 we think is wholly satisfied by the information provided in
7 Exhibit B to the motion as incorporated into the Ferraro
8 declaration. Ms. Cornell also says that she can't really
9 tell if participants are insiders because we redact salary
10 information. I would note, Your Honor, we do provide salary
11 information albeit not the precise amount, but in a narrow
12 --

13 THE COURT: Yeah, and I had urged that --

14 MR. KWASTENIET: Exactly that, yes.

15 THE COURT: -- ranges be included. I understood
16 that the names, the exact salary information was in my view
17 confidential commercial information, but to assure that the
18 public record has sufficient information for people to
19 consider, evaluate the revised KERF. I was satisfied if it
20 provided salary information in ranges more description about
21 what their job responsibilities are. That's been done. And
22 so I'm satisfied with how that was done.

23 MR. KWASTENIET: Great. Thank you, Your Honor.

24 And in addition to providing the salary information and what
25 departments people work in, the supplemental Ferraro

1 declaration also does provide further evidence that the
2 proposed participants are not insiders. And specifically,
3 Mr. Ferraro attests that none of the proposed KERP
4 participants sits on or reports to the Debtor's board, was
5 appointed by the board, exercises control over the Debtor's
6 operations, directs overall policy, maintains substantial
7 independent decision-making authority, or sets the terms of
8 their own compensation.

9 Your Honor, we believe that those are the factors,
10 relevant factors to determine when somebody as a functional
11 matter, you know, has the qualities of an insider or not.
12 And we would rest on the Ferraro declaration to address Ms.
13 Cornell's objection. And Mr. Ubirna De Las Heras also
14 raises a question about whether people are insiders. We
15 think that the record very clearly establishes that the
16 proposed KERP participants are not insiders.

17 THE COURT: All right. I will -- well, go on with
18 your presentation and then I'm going to give Ms. Cornell an
19 opportunity to argue her objections.

20 MR. KWASTENIET: Great. So that leaves us really
21 with the objection for Mr. Ubirna De Las Heras. He raised
22 several points about insiders and the like which I think
23 I've already covered. But he also raised a question about,
24 well, without knowing the exact names of the employees, how
25 do we know if people may have taken cryptocurrency off the

1 Debtor's system. And in response to that, Your Honor, we
2 thought that that was a fair point. In retrospect, maybe
3 something that I wish I had thought of a few weeks ago.

4 But in any event, the Debtors are agreeing, and we
5 will submit a revised form of order if Your Honor's inclined
6 to grant the KERP motion in the next several days. That
7 will exclude from the initial list of approved KERP
8 participants any employee who transferred crypto off the
9 system within the 90 days before filing, or who transferred
10 crypto from another program into the custody program thereby
11 arguably improving their position.

12 THE COURT: So as I understand it, this revised
13 KERP is limited to 59 employees. Are any of those -- am I
14 correct about the 59? That was --

15 MR. KWASTENIET: That is correct, Your Honor.

16 THE COURT: Are any being excluded, or you don't
17 know yet?

18 MR. KWASTENIET: We're still looking into that,
19 Your Honor, and we would propose to submit a revised form of
20 order in the next few days once we've determined whether and
21 who might need to be excluded based on our agreement that we
22 won't give an initial KERP award. Now, I will say, Your
23 Honor, for the benefit of employees, you know, who may have
24 withdrawn some small amount of crypto three months ago,
25 three months before the filing or something. It's our

1 intention to conduct an investigation. And if we determine
2 in discussion with U.S. Trustee and the Creditors Committee
3 that somebody's transaction history is not on the basis of
4 inside information, we have a mechanism built into the KERP
5 to propose adding people into it on notice with an
6 opportunity to -- for a hearing if somebody objects.

7 And so I think it's entirely possible that we may
8 exclude somebody initially because the raw data shows there
9 was a transaction, but then we also plan to look into it and
10 determine whether we think there was --

11 THE COURT: I think in fairness no inference will
12 be drawn from the fact that you've excluded --

13 MR. KWASTENIET: Yes.

14 THE COURT: -- anybody in the first instance. And
15 if you're able to work out -- assuming that I approve the
16 KERP, assuming that there's no objection to putting them
17 back in, that's an acceptable approach. But let's see where
18 we get to.

19 MR. KWASTENIET: That's great. We appreciate
20 that, Your Honor. And so that brings us just to the
21 summation of the evidence in the declarations. First of
22 all, the Gartrell declaration based on a study of comparable
23 companies concludes that the KERP is reasonable and based on
24 market comparables. The awards given to the participants on
25 average range between the 25th and 50th percentile, so this

1 is certainly not an overly generous KERP in that regard.

2 Mr. Ferraro also provides great evidence about the need to
3 retain people and the significant attrition that's been
4 facing the company.

5 THE COURT: What's the head count currently?

6 MR. KWASTENIET: The head count, I believe, Your
7 Honor, the last I saw was approximately 170. Was it 160 --

8 MAN 2: 170 employees that have not tendered their
9 resignation. Some take a while to get --

10 THE COURT: Why don't you just put that number on
11 the record? I'm not (indiscernible) --

12 MR. KWASTENIET: Yes, Your Honor. The number is
13 170 employees. There are a few who have tendered their
14 resignation and are in the process of giving their sort of
15 two weeks' notice who are still there, but there is a core
16 group of 170. As we sit here today, 190 people may have
17 shown up for work, but 20 of those are on their way out
18 transitioning out. So it's -- we're down to a group of 170
19 people, Your Honor, which is about 100 lower than when we
20 first filed the KERP motion back in -- the initial KERP
21 motion back in the beginning of October.

22 So we think that the record is very clear that we
23 need to do this to retain people. We are getting really
24 down to the nub of what we would need in order to continue
25 to function, answer diligence requests, put together the go-

1 forward plan. Whether that's a sale or whether that's a
2 standalone, we're working hard on both of those. We think
3 that the KERP program -- at this point, we really are
4 focused on getting people to stick around through the end of
5 the reorganization. This is a one-year KERP program, so we
6 think the KERP is designed well to match with our goal,
7 which is to get key people to --

8 THE COURT: I think the goal is less than a year,
9 but --

10 MR. KWASTENIET: It's less than a year and the
11 comp is front-weighted. It's definitely less than a year,
12 Your Honor. But based on that, we think that the record's
13 clear that the KERP is needed and it's reasonable, and we'd
14 ask Your Honor to approve the KERP motion.

15 THE COURT: All right. Ms. Cornell, do you want
16 to be heard?

17 MS. CORNELL: Thank you again, Your Honor. Shara
18 Cornell on behalf of the Office of United States Trustee. I
19 know that Your Honor's already read our objection filed at
20 Docket 1551. So if Your Honor has any questions for me,
21 otherwise, we'll just rest on the papers today.

22 THE COURT: Thank you, Ms. Cornell.

23 MS. CORNELL: Thank you.

24 THE COURT: All right. Does anybody else wish to
25 be heard in opposition to the amended motion for entry of

1 the -- of an order approving the KERP? All right. Not
2 having -- hearing anyone, I'll go ahead and rule from the
3 bench.

4 CLERK: Sorry, Judge. Someone's raising their
5 hands.

6 THE COURT: Okay. I can't see that. So who is
7 raising their hand?

8 CLERK: Mr. De Las Heras.

9 THE COURT: Okay. Go ahead.

10 MR. DE LAS HERAS: I am, Your Honor. May I be
11 very brief today? Thank you. I assume it is --

12 THE COURT: That's fine.

13 MR. DE LAS HERAS: -- fine. An objection with
14 Docket Number 1544. If Debtors are going to address my
15 concern, there is nothing I can say, but I rest in what is
16 in my objection Docket 1544. Thank you.

17 THE COURT: Okay. Thank you very much. Does
18 anybody else wish to be heard? Deanna, I can't see if
19 anybody's raising their hand, so I'll just depend on you to
20 call them out.

21 CLERK: I see no additional raised hands, Judge.

22 THE COURT: All right. So what I'm going to do is
23 read my ruling into the record. I would ask that the Debtor
24 have a transcript of the ruling prepared so that -- what
25 I've been -- tried to be very cautious about in this case is

1 when I rule, I've been trying to rule in written opinions.
2 I want to be sure that there's no misunderstanding about
3 what I have ruled. But here on this motion, I'll go ahead
4 and just read my ruling into the record. A transcript can
5 be prepared, and it will be on ECF -- on the ECF Docket. I
6 suppose it'll be on the claims agent's docket as well and so
7 that people can see precisely what I've ruled.

8 So first, let me deal with the general legal
9 framework for approving KERPs. Section 363(b) of the
10 Bankruptcy Code provides that a Debtor, after notice and a
11 hearing, may use, sell, or lease other than in the ordinary
12 course of business property of the estate. That's Section
13 363(b)(1). To approve the use of estate property under
14 Section 363(b)(1) of the Bankruptcy Code, a Debtor must show
15 that the decision to use the property outside of the
16 ordinary course of business was based on the Debtor's
17 business judgment. See *In re Chateaugay Corp.*, 973 F.2d 141
18 at 143 (2nd Cir. 1992) holding that a judge determining a
19 Section 363(b) application must find a good business reason
20 to grant such application.

21 Section 503 governs the allowance of
22 administrative expenses "for actual necessary costs and
23 expenses of preserving a Debtor's estate". That's Section
24 503(b)(1)(A). The two general overriding policies of
25 Section 503 of the Bankruptcy Code -- excuse me -- are to

1 preserve the value of the estate for the benefit of its
2 Creditors and to prevent the unjust enrichment of insiders
3 of the estate at the expense of its Creditors. See In re
4 Journal Register Co., 407 B.R. 520 at page 535 (Bankr.
5 S.D.N.Y. 2009). It cites the Second Circuit's McFarland's
6 decision, which is at 789 F.2d 98 at page 101 (2d Cir.
7 1960).

8 So with respect to payments to insiders, Section
9 503(c)(1) prohibits the transfers to insiders unless certain
10 strict requirements are met. A, the transferer obligation
11 is essential to retention of the person because the
12 individual has a bona fide job offer from another business
13 at the same or greater rate of compensation; B, the services
14 provided by the person are essential to the survival of the
15 business; and C, either the amount of the transfer made to
16 or obligation incurred for the benefit of the person is not
17 greater than an amount equal to ten times the amount of the
18 mean transfer or obligation of a similar kind given to non-
19 management employees for any purpose during the calendar
20 year in which the transfer's made or obligation is incurred.

21 Or if no such similar transfers were made to or
22 obligations were incurred for the benefit of such non-
23 management employees during such calendar year, the amount
24 of the transfer or obligation is not greater than an amount
25 equal to 25 percent of the amount of any similar transfer or

1 obligation made to or incurred for the benefit of such
2 insider for any purpose during the calendar year before the
3 year in which such transfer is made or obligation is
4 incurred. That's Section 503(c)(1).

5 Section 101(31)(B) defines an insider in the
6 context of a corporation as including a director of the
7 corporation, officer of the corporation, person in control
8 of the Debtor, partnership in which the Debtor is a general
9 partner, general partner of the Debtor, or relative of a
10 general partner, director, officer, or person in control of
11 the Debtor.

12 With respect to payments to non-insiders, if an
13 employee is not an insider, Section 503(c)(3) of the
14 Bankruptcy Code permits payments to the Debtor's employees
15 outside the ordinary course of business if such payments are
16 justified by "the facts and circumstances of the case".

17 Importantly, Section 503(c)(3)'s "facts and circumstances"
18 justification test "creates a standard no different than the
19 business judgment standard under Section 363(b) of the
20 Bankruptcy Code." See *In re Velo Holding, Inc.*, 472 B.R.
21 201 at page 209 (Bankr. S.D.N.Y. 2012). That's one of my
22 opinions. See also *Borders Group*, 453 B.R. at pages 473 and
23 74 evaluating the Debtor's KERF under a business judgment
24 rule. That's also one of my opinions.

25 *In re Dana Corp.*, 358 B.R. 567 at 576 and 77

1 (Bankr. S.D.N.Y. 2006) describing six factors that courts
2 may consider when determining whether the structure of a
3 compensation proposal meets the "sound business judgment
4 test" in accordance with Section 503(c)(3) of the Bankruptcy
5 Code.

6 All right. I've already indicated I granted the
7 motion to shorten time, and I granted the ceiling motion. I
8 believe they're entirely appropriate in these circumstances.
9 I invited the shortening of time, and the ceiling seems
10 entirely appropriate consistent with comments I made
11 earlier.

12 All right. So with respect to the KERP, whether
13 the KERP participants are insiders, the question of whether
14 participants are insiders is vital because it determines
15 whether the Debtors will be required to meet the strict
16 standards of Section 503(c)(1) or whether their KERP will be
17 evaluated under the more lenient business judgment standard.
18 Under Section 101(31) of the Bankruptcy Code where a Debtor
19 is a corporation, insiders may include any "(i) director of
20 the Debtor; (ii) officer of the Debtor; (iii) person in
21 control of the Debtor; or (iv) relative of a director,
22 officer, or person in control of the Debtor".

23 Courts have also considered -- I've also concluded
24 that an employee may be an insider if such employee has at
25 least a controlling interest in the Debtor or exercises

1 sufficient authority over the Debtor so as to unqualifiedly
2 dictate corporate policy and the disposition of corporate
3 assets. See *Velo Holdings*, 472 B.R. at 208. An
4 individual's title by itself is insufficient to establish
5 that an individual is a director or officer. See *In re*
6 *Longview Aluminum, LLC*, 419 B.R. 351 at page 355 (Bankr.
7 N.D. Ill. 2009). There are other cases that reach that same
8 proposition. I won't burden the record further.

9 In *Public Access Technologies*, for example, the
10 court found that an executive vice president was not an
11 officer of the Debtor because there was no evidence such as
12 affidavits, articles of incorporation, corporate minutes,
13 resolutions, or any other document proving that the
14 executive vice president was an officer under Section
15 101(31)(b), 307 B.R. at 506.

16 Here I'm satisfied that the participants are not
17 insiders. In their exhibits, the Debtors have provided
18 detailed information about the participants' duties, salary,
19 and position within the reporting structure. The Debtors
20 have provided a declaration attesting that though some of
21 the employees have titles such as "head", "director", "vice
22 president", or "chief", none of the participants have
23 discretionary control over substantial budgetary amounts or
24 significant control with respect to the Debtor's corporate
25 policies or governance. See the Ferraro declaration,

1 Paragraph 19.

2 Moreover, each of the participants' roles are
3 limited in scope. None made company wide or strategic
4 decisions, and none exercised sufficient authority over the
5 Debtor as to unqualifiedly dictate corporate policy. See
6 the motion in Paragraph 39. It cites In re Global Aviation,
7 478 B.R. at 140 and 150. None of the participants were
8 appointed by the board to sit on the board or directly
9 report to the board. See In re LSC Communications, 631 B.R.
10 818 at page 827 (S.D.N.Y. 2021) finding that the employees
11 who were appointed by the board and would be deemed officers
12 of the Delaware Corporate Law should "weigh heavily in
13 concluding that the employees are officers for bankruptcy
14 code purposes."

15 So whether the KERP should be approved, given that
16 the participants are not insiders, the KERP should be
17 evaluated under Section 503(c)(3) of the Bankruptcy Code to
18 ensure that it is "justified by the facts and circumstances
19 of the case." See In re Borders Group, 453 B.R. at page
20 470. On balance, in described in more detail below with the
21 details of the unredacted information, I am satisfied the
22 Debtors have met their burden of showing that the KERP is
23 justified in a reasonable exercise of their business
24 judgment. So then with respect to whether this KERP is
25 justified by the facts and circumstances of the case,

1 although the Court should be satisfied that the KERP
2 employees are not insiders under Section 101(31), the KERP
3 must still be analyzed under Section 503(c)(3) because it is
4 not an ordinary course transaction. See *In re Nellson*
5 *Nutraceutical, Inc.*, 369 B.R. 787 at pages 803 and 804
6 (Bankr. D. Del. 2007).

7 In the context of approving compensation programs,
8 courts in the Second Circuit have considered the factors
9 identified in *In re Dana Corp.*, which I cited earlier, when
10 determining if a compensation proposal and the process for
11 developing it meet the sound business judgment test. Those
12 issues are, A, is there a reasonable relationship between
13 the plan proposed and the results to be obtained? I.e.,
14 will the key employees stay for as long as it takes for the
15 Debtor to reorganize or market its assets?

16 B, is the cost of the plan reasonable in the
17 context of the Debtor's assets, liabilities, and earning
18 potential? C, is the scope of the plan fair and reasonable?
19 Does it apply to all employees? Or if not, does it
20 discriminate unfairly? And D, is the plan or proposal
21 consistent with industry standards? E, what were the due
22 diligence efforts of the Debtor in investigating the need
23 for a plan analyzing which key employees need to be
24 incentivized? What is available? And what is generally
25 applicable in a particular industry? And F, did the Debtor

1 receive independent counsel in performing due diligence and
2 in creating and authorizing the incentive compensation. See
3 In re Dana Corp., 358 B.R. at pages 576 and 77.

4 So the relationship between this plan, the plan
5 proposed, and the results obtained. The reasonable
6 relationship exists between the plans proposed and the
7 results to be obtained. See 358 B.R. at 566 and 57. The
8 Debtors have noted that the goal of their KERP is to have
9 appropriate staff on hand to facilitate a reorganization of
10 sale. See the motion at Paragraph 29. The proposed KERP is
11 narrowly tailored to that goal. The Debtors have chosen 59
12 out of 167 employees at the time of this writing -- the time
13 of the writing of the motion, who the Debtors believe have
14 "institutional and technical knowledge crucial to the
15 Debtor's ability to maximize value." See the Ferraro
16 declaration at Paragraph 15.

17 Further, the payments are paid in increments and
18 are tied to the participants remaining at the Debtors for a
19 year, which is aligned the Debtor's goal of keeping the
20 participants on staff through the restructuring and sale
21 process. See the motion at Paragraph 29. The Debtors have
22 also tailored the payment amounts so that the employees that
23 are more critical and more difficult to replace get higher
24 bonuses. See the motion at Paragraph 19. There is already
25 evidence that the employees are strained by the Chapter 11

1 responsibilities. As the examiner noted in her report that
2 there were delays in the Debtor's production of documents
3 due to the "reduction in Celsius' workforce.". See ECF
4 Docket Number 1411 at page 11.

5 Accordingly, it is evident to the Court that given
6 the pace of attrition here, the Debtors could continue to
7 lose staff at an unsustainable rate if employees are not
8 incentivized to stay. I would note I've had other cases
9 where, as a result of attrition, the Debtors have wound up
10 having to hire more expensive consultants than the employees
11 who are filling those tasks now.

12 All right. Next, the cost of the proposed plans.
13 The cost of the proposed KERP is reasonable in light of the
14 Debtor's financial situation. The cost of the KERP bonuses
15 is approximately \$2.84 million. According to the analysis
16 performed by Gartrell, which compares the Debtor's KERP to
17 26 similarly sized companies, the cost per participant is
18 positioned between the 25th percentile and median of the
19 market. The total cost of the program, approximately 2.84
20 million, is on the higher end between the 75th and 90th
21 percentiles, but the cost as a percentage of assets is on
22 the low end below the 25th percentile.

23 On balance, Gartrell attests that the KERP are
24 "reasonable and appropriate in light of competitive
25 practice." Given that on average the various program

1 metrics fall around the median of the market, I agree with
2 respect to unfair discrimination. The Debtors have also
3 shown that the proposed KERP does not discriminate unfairly.
4 See In re Eaglepicher Holdings, Inc., 2005 W.L. 4030132 at
5 star 4 (Bankr. S.D. Ohio Aug. 26, 2005). In that case, in
6 Eaglepicher, the court found that the Debtor's proposed
7 retention plan did not unfairly discriminate against its
8 employees. There the plan only covered "a small minority of
9 employees". However, it was broad enough so that it did not
10 include only senior management.

11 The Court observed that a small group of employees
12 could benefit from the retention plan to the exclusion of
13 others because not every employee is similarly situated in
14 terms of their employment to the reorganization process.
15 Here the Debtors have carefully selected a small pool of
16 employees that are critical in the restructuring process.
17 "The participants are critical to the continued maintenance
18 of customer accounts and that a platform more generally by
19 among other things performing essential security functions
20 and building enhanced features and functionality for the
21 Debtor's system and assets." See the supplemental Ferraro
22 declaration at Paragraph 19.

23 The Debtors have also attested and shown evidence
24 that these employees have been forced to shoulder additional
25 burdens related to the Chapter 11 such that they are

1 deserving of bonuses. Finally, there is also no evidence in
2 the record that the Debtors have unfairly excluded
3 employees.

4 And then with respect to comportment with industry
5 standards, the proposed KERP comports with industry
6 standards as discussed above. The Debtors have submitted a
7 declaration from a compensation expert that indicates that
8 the terms, cost, and structure of the KERP comport and
9 structure -- comport with the structure of the industry.

10 The propriety of the diligence. The Debtors have
11 exercised proper due diligence in formulating the proposed
12 KERP. In In re Brooklyn Hospital Center, 341 B.R. 405 at
13 page 412 (Bankr. E.D.N.Y. 2006), the court found that due
14 care was exhibited by the Debtor in the formulation of a
15 KERP because, among other things, "the board consulted with
16 its counsel and financial advisors, formulated several
17 proposals, reduced the amount to be paid pursuant to the
18 KERP, and after negotiations with the committee, broadened
19 the scope of employees."

20 Here the Debtors engaged and retained WTW to
21 provide independent compensation advice, and the Debtor's
22 special committee undertook a deliberative process convening
23 with the Debtor's various advisors. See the Ferraro
24 declaration at Paragraph 17. The Debtors also conferred
25 with the U.S. Trustee on November 2, 2022 and based on the

1 results of the conversation, the Debtors revised the KERP
2 participant list. And see the amended motion in Paragraph
3 5. Accordingly, I am satisfied that the Debtors have
4 undertaken sufficient diligence.

5 And then with respect to adequacy of counsel, in
6 the last -- lastly, the Debtors' counsel from a highly
7 competent and experienced independent compensation
8 consultant, their counsel and their highly experienced
9 independent consultation with WTW, see our trial declaration
10 at Paragraph 7, together with the input that the Debtors
11 received from other advisors, I'm satisfied that the Debtors
12 received sufficient counsel.

13 For all of those foregoing reasons, the Court
14 grants the amended KERP motion. I understand before an
15 order will be entered you'll go back and review the
16 participant list to satisfy that, at least initially,
17 looking at it that none had withdrawn substantial funds in
18 the 90 days before. They can still be included in that
19 subsequently if that's appropriately.

20 MR. KWASTENIET: That's right, Your Honor. And we
21 expect that'll take a few days --

22 THE COURT: That's fine.

23 MR. KWASTENIET: -- to sort out that analysis.
24 And then once we've concluded that, we'll present the
25 revised form of order to the U.S. Trustee and the committee

1 and submit to chambers, Your Honor.

2 THE COURT: All right. Thank you very much.

3 MR. KWASTENIET: Thank you very much.

4 THE COURT: All right. Hopefully the transcript
5 will be readable. It saved me from having to do one more --
6 still one more opinion. Okay.

7 MR. NASH: Good afternoon -- pardon me. Good
8 afternoon, Your Honor.

9 THE COURT: You get to speak again, Mr. Nash.

10 MR. NASH: I do. Good afternoon, Your Honor. Pat
11 Nash for the Debtors. Next on the agenda is the Debtor's
12 motion to -- for entry of an order extending the Debtor's
13 exclusive periods to file a Chapter 11 plan and solicit
14 acceptances of that plan.

15 THE COURT: All right. Just give me a second to
16 find my relevant notes for that.

17 MR. NASH: And that's Docket Number 1317, Your
18 Honor.

19 THE COURT: Yes.

20 MR. NASH: Also relevant, Your Honor, we have
21 filed a revised form of order at Docket Number 1588. That
22 reflects resolution or avoidance, I will say, of resolution
23 with the UCC, avoidance of an objection from the UCC. The
24 UCC did file a statement in connection with the extension of
25 the exclusive periods. That's found at Docket Number 1536.

1 Your Honor, we had four timely filed objections to the
2 motion. Two of those have been resolved.

3 There was an objection, limited objection from
4 certain Celsius borrowers, customers who were part of the
5 borrower program at Docket Number 1475. It's my
6 understanding that that objection is resolved by the changes
7 to the order and the shortened exclusive periods as compared
8 to the time we sought when we filed the motion. We've also,
9 Your Honor, for similar reasons and a similar basis
10 withdrawn -- resolved, pardon me, the objection of the ad
11 hoc group of withhold account holders, which is found at
12 Docket Number 1494.

13 We have been unable to resolve or the changes that
14 we've made to the order, Your Honor, I'm -- it was my
15 understanding do not resolve the objection of Mr. De Las
16 Heras, which is found at Docket Number 1476. And similarly,
17 it is our understanding that the objection of Irena Ducan at
18 Docket Number 1477 remains unresolved.

19 Last thing I'll note from a procedural point of
20 view, Your Honor, at Docket Number 1553, Mr. Immanuel
21 Herrmann filed on behalf of himself and apparently 375 other
22 Celsius earned customers, and maybe customers of other
23 programs -- it's not clear to me -- filed a joinder to the
24 objection that was filed by the borrower customers, which we
25 have resolved. So with that, Your Honor, I'll talk a little

1 bit about, you know, what we've accomplished, where we're
2 going, and the back and forth a little bit that led to us
3 agreeing to the shortened period.

4 So Your Honor, when we filed the motion, we sought
5 an extension of our exclusive period to file a plan through
6 the end of March. We met with a lot of pushback from
7 represented and unrepresented -- represented Creditors,
8 unrepresented Creditors, the official committee, the ad hoc
9 committee that the amount of time that we sought was too
10 long, wanted us to be, you know, on a shorter leash. In
11 many respects, Your Honor, those Creditors were pushing
12 through an open door. It is definitely time, and this week
13 is a big part of that. It is time to be moving these cases
14 forward.

15 In consultation with the UCC, what we've agreed
16 and what you see in the revised order is an extension of the
17 Debtor's exclusive periods not only to file, but also to
18 solicit a plan through February 15th. We've also --

19 THE COURT: And how are you going to accomplish
20 that?

21 MR. NASH: Well, we're going to -- in all
22 likelihood, Your Honor, at a minimum be seeking an extension
23 of the solicitation period in advance of February 15th.
24 That will be easier to do and easier for people to digest to
25 the extent that we have a plan on file.

1 THE COURT: Well, to the extent you have a plan on
2 file, I think that would probably go a long way to at least,
3 you know, easing at least some of the concerns and
4 objections that have been expressed.

5 MR. NASH: Understood, Your Honor, and one of the
6 reasons why -- we understand those concerns. We understand
7 that perspective, and it's why, as I said, I believe that
8 the UCC and others were pushing through an open door, at
9 least as it came to shortening the requested extension of
10 the exclusive periods.

11 A lot of -- so, Your Honor, big picture. We're in
12 the midst of a marketing process. We have -- of course the
13 GK8 sale will be in front of Your Honor later this week. We
14 are in the midst of a marketing process with respect to the
15 remainder of the Debtor's assets. The initial bid deadline
16 was two or so weeks ago, maybe three weeks ago now. We have
17 final bid deadline of December 12th. That marketing process
18 is being done in close coordination with the UCC as is
19 everything that we do in these cases.

20 We are also on a parallel path working very hard
21 with the UCC on a potential standalone reorganization. And
22 Mr. Ferraro and the individual members of the committee, in
23 particular the two co-chairs, they speak regularly. There
24 is a lot of work that is, you know, under -- being
25 undertaken in that regard. And as you saw from the UCC's

1 limited objection or statement, however you want to
2 characterize it, we agree with them. I mean, it is time to
3 be moving these cases forward.

4 The level of frustration in the community is
5 palpable. And the only way that we're going to get past it
6 -- I don't know that we'll ever get past it, but the only
7 way that we'll deal with it is if we start moving these
8 cases forward in a concrete fashion, and that is what we
9 intend to do. You know, you hear a lot, Your Honor, from
10 certain pro se Creditors and from the regulators that, you
11 know, we don't speak with them enough. There's a limit to
12 the number of people that we can speak with.

13 And as it relates to the regulators, Your Honor, a
14 reorganized standalone Celsius is going to have to be
15 regulatory compliant. We are working with the UCC to
16 understand what it is we think we can and can't do in order
17 to be regulatory compliant. We don't have anything to talk
18 to the regulators about yet. But when we do, we will. And
19 so unless Your Honor has any questions for me, I think Mr.
20 Pesce or one of the White and Case lawyers may want to
21 address Your Honor. But otherwise, we think that this, you
22 know, relatively limited (indiscernible) a bit necessary.
23 To say it would be a free-for-all if we lost exclusivity is
24 probably the understatement of the century, Judge. So
25 unless you have any questions, Your Honor, I'll --

1 THE COURT: Let me hear from Mr. Pesce.

2 MR. NASH: Thank you, sir.

3 MR. PESCE: Thank you, Your Honor. For the
4 record, Gregory Pesce, White and Case on behalf of the
5 Creditors committee. If you'll indulge me for just, you
6 know, two or three minutes, I wanted to provide some context
7 and to amplify some of the things we put in our statement.
8 But as I've seen during the course of this hearing, there's
9 a lot of community -- a lot of the community watching today,
10 so I just want to make a few points very crystal clear.

11 So since the outset of this case, the committee
12 has sought to maximize value. In other words, we've tried
13 to make the pie bigger. At the same time, we've also been
14 focused on max -- in addition to maximizing value,
15 equalizing treatment among Creditors. It's very problematic
16 for a variety of reasons to think that one Celsius user will
17 get a higher recovery based on very attenuated, perhaps
18 unknowable circumstances of how they put coins on --

19 THE COURT: They'll just have a different
20 extremely vocal group if that were to happen.

21 MR. PESCE: Correct. It would -- you know, it's
22 something we thought about at the beginning of the case is
23 the possibility of splintering many, many committees and
24 many different people here eating up value, delaying time.
25 So we've really focused on how to equalize treatment to the

1 extent possible among Creditors. As you've heard today,
2 that's very challenging for two big reasons. One is -- and
3 the committee shares this goal. Our members are very
4 committed to providing some kind of in-kind recovery in some
5 type of crypto to the constituents to the greatest extent
6 possible.

7 The second big challenge is we have a fundamental
8 math problem. There's about \$5.5 billion of customer
9 obligations. There are, you know, two billion and change of
10 coins. So depending on the trading price of coins, which
11 varies daily and is very volatile right now, you're looking
12 at something like a 50 percent hole on some days for the
13 Creditors. So from the outset --

14 THE COURT: And you haven't included mining.

15 MR. PESCE: Well, yeah, and that's what I'm going
16 to get to. So from the outset -- and this is what
17 distinguishes this case perhaps from Voyager, which is also
18 in the Southern District before Judge Wiles, we've tried to
19 figure out a way to supplement the coin recovery. And here
20 we have a couple of pockets of value that might make that
21 possible. As was mentioned, there's the GK8 asset. The
22 committee worked closely with the Debtors on that process.
23 It was a tough call, but at the end of the day we determined
24 that there was very little, perhaps any value to that
25 business without the founders being on board with the sale.

1 The founders were adamant that they wanted out of
2 Celsius. So we had to decide for GK8 do we let the value go
3 potentially to zero, or do we take the bird in the hand
4 today. There'll be more about that later in the week with
5 the other filings the Debtor will be making I'm sure.
6 Second, we have the mining business, something that none of
7 these other crypto exchange bankruptcies have. The value of
8 that business could be significant, but we also need to take
9 our time looking at it. It has a counterparty as you've
10 heard, Core, which has its own challenges. There's lots of
11 other internal things going on.

12 And then finally, the third pocket of value is the
13 litigation recovery that we expect will be a significant
14 portion of what Creditors get here. So with that said,
15 going into the exclusivity objection, and we literally
16 received thousands of emails, calls, text messages, tweets,
17 Reddit messages, we seriously considered seeking to
18 terminate exclusivity. But that begged the question of to
19 what end. As Your Honor knows, we've had some differences
20 of opinion with the examiner.

21 That said, we supported the appointment of the
22 examiner and the work that she is doing with her team. That
23 report, though, which is not due until January 17th, that
24 report is going to cost a lot of money. It's taking up a
25 lot of time of the committee and the people at the company.

1 We would like to understand at least some of what is in that
2 report before moving forward.

3 Second, as Mr. Nash noted, the bids, we've
4 received indicative bids, but the final bids aren't due
5 until December the 12th. And then finally, GK8, you know,
6 depending on how long that process takes in Israel, could
7 take something like 30 to 60 days to close. So with all
8 that said, you know, at the same --

9 THE COURT: What's the range of recovery from GK8?

10 MR. PESCE: You know, the headline price is \$44
11 million. There's a couple of setoffs for taxes and some
12 other things, but I think it's in the high 30s. We'll have
13 to check with the Debtors. You know, but all that being
14 said, the extension that was sought was too long. We
15 thought we challenged liquidity too much, and we worked to
16 keep the Debtors' feet to the fire.

17 I want to just highlight a few aspects of this
18 deal, which might be very apparent to the bankruptcy nerds
19 in the room but might not be to some folks listening in at
20 home. So there's a hearing on February the 15th. That's an
21 omnibus hearing. Our deal is that that's when exclusivity
22 ends. We would expect that if the Debtor seeks a further
23 extension, for whatever reason that might be, it'll be heard
24 at that hearing. Second, there -- the local bridge order,
25 which permits an extension of a deadline as long as --

1 THE COURT: That's done away with the filing.

2 MR. PESCE: It will be done away with, and then
3 finally, on the solicitation, they can't just file a plan
4 the day before and keep the benefit of that. So what are we
5 going to do during this period before Valentine's Day? As
6 Mr. Nash noted, we're looking at the new co-concept. Our
7 co-chairs speak regularly with Mr. Ferraro. We're trying to
8 see if that is -- that works from a regulatory perspective
9 and if it can get customers to trust it.

10 Second, we insisted on a bidding process. That
11 process is going on. We've received several promising bids,
12 and we're working very closely with those bidders. We've
13 had in-person and Zoom meetings with several bidders,
14 including members of our committee. Those -- the bids that
15 we have gotten to-date are all very interesting to us and we
16 think have significant promise. But candidly, the bids are
17 not ready for prime time just yet. They have financing
18 needs. They will need to have a conversation with Ms.
19 Milligan and other regulators. And that said, though, we
20 expect that those issues will be resolved quickly.

21 Finally, at the same time, the committee is
22 unwilling to put all its eggs in the basket of either the
23 new co or these bidders coming forward. So at the same time
24 as all of those are happening, we're working on our own
25 fallback plan that we will be ready to file ahead of

1 Valentine's Day if these other options need more time to
2 work out or if they are not feasible. So that one way or
3 the other, we can ensure the account holders get the value
4 of the mining business, get the value of GK8, get the
5 valuation of the litigation trust we expect will be set up,
6 and the crypto value one way or the other.

7 Just one final -- two final points before I close,
8 Your Honor. I note that today's proceedings in particular
9 have been very challenging for many of the account holders
10 to listen to and to understand the perspective of the
11 committee. We are deep -- we work for the customers first
12 and foremost. We are their fiduciary. We take that very
13 seriously. In particular, we've spent -- we were tallying
14 it up this morning, White and Case alone has spent something
15 like over 1,000 hours speaking to customers, including many
16 of the people who spoke today. We're going to continue to
17 do that, and everyone -- we're on Twitter. They have our
18 emails. We have a website. If people want to speak to us
19 and share their perspectives, we're more than willing to
20 hear it.

21 And second, on the regulators, it is true we have
22 not presented a proposal to the regulators yet. That said,
23 that -- we view that as a necessary part of this. We
24 negotiated for special information and participation rights
25 in the bidding procedures. We expect those will get made to

1 you soon.

2 So, in closing, this was a difficult choice for
3 the committee. We do think that the process will have
4 benefited by having an exclusivity extension, but we really
5 view this as presumably the only one that we would support.
6 Based on what we see now, we need to work hard. We're going
7 to work hard with all the constituents, including the
8 Debtor, to get it done. So I appreciate Your Honor giving
9 me the luxury to explain and amplify some of these points
10 today.

11 THE COURT: Thank you, Mr. Pesce. Ms. Cornell or
12 Mr. (Indiscernible)?

13 MS. CORNELL: Good afternoon again, Your Honor.
14 Shara Cornell on behalf of the Office of the United States
15 Trustee. The United States Trustee communicated informally
16 with the Debtors regarding their request to extent
17 exclusivity. I can report that the Debtors took our
18 requests seriously and implemented them into the proposed
19 order. And we are in agreement on the extension requested
20 today. Thank you.

21 THE COURT: All right. Does anybody else wish to
22 be heard? Ms. Kovsky, you're on the screen. Do you want to
23 be heard?

24 MS. KOVSKY: Thank you, Your Honor. We had filed
25 a limited objection seeking to terminate the Debtor's

1 exclusivity after January 31st if they didn't get a plan on
2 file. We're comfortable given the logistics as explained by
3 Mr. Pesce that this proposed order effectively does the same
4 thing that we are requesting that the Debtors want to have
5 an extension of exclusivity to solicit their fund. They've
6 really got to get it on file more or less by January 31st,
7 hopefully even sooner.

8 Our preference would have been to actually put in
9 something now to modify exclusivity to allow the committee
10 to file something promptly after that if the Debtors don't
11 get a plan on file timely. But since the committee is
12 comfortable with this proposed plan, the withhold group will
13 live with it as well.

14 THE COURT: Thank you, Ms. Kovsky. Anybody else
15 wish to be heard?

16 MR. ADLER: Your Honor, can you hear me? This is
17 David Adler.

18 THE COURT: Yes, I can hear you, Mr. Adler.

19 MR. ADLER: Good afternoon, Your Honor. David
20 Adler from McCarter and English on behalf of certain
21 borrowers, now the ad hoc group of borrowers, which was
22 filed earlier today. We filed a limited objection, Your
23 Honor, with respect to the time that was sought by the
24 Debtors of 141 days. We thought 60 days was more
25 appropriate. After discussions with Kirkland, we agreed

1 with the schedule that they proposed.

2 We did also raise issues, concerns that we have in
3 this case regarding lack of communication, and it goes to
4 the -- some very important issues in this case, Your Honor,
5 with respect to the bidding process. If a bidder is coming
6 in and wanting to buy assets, the bidder has to obviously
7 place a value on those assets. And having discussions with
8 the constituents might assist the bidder in coming up with a
9 value, particularly with respect to the borrowers who have
10 certain rights under 363(o).

11 So I've spoken with Kirkland about that issue in
12 particular, and we're trying to work it out. I'm optimistic
13 that we will work it out. And based on that, Your Honor, I
14 am -- the time period proposed in the revised proposed form
15 of order is acceptable to me.

16 THE COURT: Thank you, Mr. Adler. Does anybody
17 else wish to be heard?

18 MR. HERRMANN: Yes, this is Immanuel Herrmann, pro
19 se Creditor. So I in my personal capacity, along with 374
20 other pro ses in their personal capacity --

21 THE COURT: Wait, wait, wait. You can speak for
22 yourself. You can't speak for 374 other people.

23 MR. HERRMANN: I -- absolutely, Your Honor. I
24 wanted to make clear, actually, at the beginning that I'm
25 only speaking for myself. So, I agree with the filing that

1 David Adler made. I'm in -- I also agree that there needs
2 to be more communication with (Indiscernible) as well. And
3 I have spoken with the Debtor about this as well, and I'm
4 optimistic that we can make progress. There's a lot of
5 creative ideas for maximizing value, and it's a pretty
6 broadly held belief as far as I have seen that we can
7 maximize value by making sure that bidders are in
8 communication with Creditors and that they'll actually go
9 along with a plan.

10 And it's the same with any kind of standalone
11 reorganization plan as well. So I did support this
12 compromise proposal as the joinder shows. And you know,
13 this meets those concerns. And that said, I think there
14 needs to be a lot more open communication with customers in
15 the next 60 days.

16 THE COURT: Thank you very much, Mr. Herrmann.
17 Anybody else wish to be heard? Not hearing anyone else, Mr.
18 Nash?

19 MR. NASH: Nothing more from me, Judge, unless you
20 have any questions.

21 THE COURT: All right. I'm going to do what I did
22 with the KERP. I'm going to rule from the bench. I would
23 ask again that a transcript be prepared so there's no
24 misunderstandings about what the Court's ruling is.

25 First, the legal standard. Under Section 1121(b)

1 of the Bankruptcy Code, a debtor has the exclusive right to
2 propose a Chapter 11 plan during the first 120 days after an
3 order granting relief. Section 1121(c)(3) extends the
4 period of exclusivity for an additional 60 days to a maximum
5 of 180 days where the Debtor has filed a Chapter 11 plan and
6 is soliciting votes on such plan. Of course, that hasn't
7 happened at this point.

8 The point of exclusivity is to promote an
9 environment in which the Debtor's business may be
10 rehabilitated and a consensual plan may be negotiated. See
11 In re Burns and Roe Enterprises, Inc., 2005 W.L. 6289213 at
12 star 4 (D.N.J. Nov. 2, 2005). Section 1121(d)(1) permits a
13 court to extend a Debtor's exclusivity for cause.
14 Specifically, 1121(d) provides that "on request of a party
15 in interest and after notice and a hearing, the court may
16 for cause reduce or increase 120-day period or the 100-day
17 period referred to in this section." However, the 120-day
18 period --

19 MAN: Can you guys hear?

20 THE COURT: Please don't interrupt. Do not
21 interrupt.

22 However, the 120-day period cannot be extended
23 beyond 18 months after the order for relief date and the
24 180-day period cannot be extended beyond 20 months after the
25 order for relief date. That's 1121(d)(2)(A) and (B). The

1 determination of cause under Section 1121(d) is a fact-
2 specific inquiry, and the Court has broad discretion in
3 extending or terminating exclusivity. See In re Adelphia
4 Communications Corp., 352 B.R. 578 at 586 (Bankr. S.D.N.Y.
5 2006).

6 A quote from that case, "A decision to extend or
7 terminate exclusivity for cause is within the discretion of
8 the bankruptcy court and is fact-specific." See also In re
9 Lehigh Valley Professional Sports Club, Inc., 2000 W.L.
10 290187 at star 2 (Bankr. E.D. Pa., March 14, 2000). Relief
11 under Section 1121(d) is committed to the sound discretion
12 of the bankruptcy judge. There are other cases. It's a
13 long line of authority.

14 The Court's examined a number of factors to
15 determine whether there is cause for extension of
16 exclusivity periods. See In re Borders Group, Inc., 460
17 B.R. 818 at 822 (Bankr. S.D.N.Y. 2011). Again, there are
18 lots of other cases that do that. The factors include, A,
19 the size and complexity of the case; B, the necessity of
20 sufficient time to negotiate a plan of reorganization and
21 prepare adequate information to allow a Creditor to
22 determine whether to accept such plan; C, the existence of
23 good faith progress toward reorganization; D, whether the
24 Debtor is paying his debts as they become due; E, whether
25 the Debtor has demonstrated reasonable prospects for filing

1 a viable plan; F, whether the Debtor has made progress
2 negotiating with Creditors; G, the amount of time which has
3 elapsed in the case; H, whether the Debtor is seeking an
4 extension to pressure Creditors; and I, whether an
5 unresolved contingency exists.

6 Not every factor is relevant to each case, and
7 factors themselves might not be determinate overall. See
8 Adelphia Communications, 336 B.R. at 590. Rather, the key
9 inquiry is whether extending or terminating exclusivity
10 would move the case forward materially. So that's the legal
11 standard. Then my analysis.

12 I agree with the comment that lifting exclusivity
13 now would lead to a freefall. I mean, it would just be
14 totally chaotic. I think this is a case where the Debtors
15 and the committee and its professionals have cooperated
16 extensively. An examiner was appointed. I think that was
17 important in this case. It obviously is expensive and time-
18 consuming, but certainly the examiner really delivered in
19 terms of the interim report, and it's been very helpful to
20 the Court.

21 There are a lot of moving parts in this case.
22 Whether there's been substantial progress is hard for me to
23 see. I hear what counsels say, and for now, at least, I'll
24 certainly take them at their word. There was agreement
25 between the committee and the Debtor early on to pursue dual

1 tracks with the standalone reorganization plan and a
2 possible 363 sale. Bidding procedures have already been
3 approved on that. We have a hearing later this week on the
4 sale of the GK8 assets.

5 The Debtors, from all appearances to me and what
6 the examiner said, the Debtors have worked collaboratively
7 with the examiner. As the staffing and the Debtor has
8 declined, it's made it that much harder to produce
9 information and documents that not only the examiner, but
10 the committee and others have wanted to see. The hearings
11 this week, while I know that some Creditors and some
12 regulators wanted to push off a decision from day one, it's
13 been clear to the Court that these are gating issues and
14 that need to be decided if possible for progress really to
15 be made.

16 There's been briefing on those. We had the
17 hearing earlier this morning on ownership of the
18 (indiscernible) assets, the sale of stable coin. The
19 objections raise reasonable frustrations of the pro se
20 Creditors and others about the pace of the case. And I'm
21 mindful of all that, but really none of them have cited any
22 legal authority that a failure to file a plan within four
23 months constitutes a lack of substantial progress. I have
24 to say in any of the larger cases I've had, I haven't had --
25 other than pre-packs, I don't think I've had really, you

1 know, plans proposed within that timeframe. And here
2 there's been a commitment to move forward with it.

3 You know, the fact that the Debtors in Voyager are
4 also represented by Kirkland and filed the plan on the
5 petition date, they had a pre-pack and things haven't turned
6 out quite the way they expected it would either. The
7 industry as a whole is in turmoil. I think the
8 professionals are doing a commendable job in keeping this
9 case from being a total freefall and keeping this case
10 moving forward.

11 I'm certainly very mindful of the concerns
12 expressed by the regulators, Ms. Milligan this morning, Ms.
13 (Indiscernible). I share those concerns. It's clear -- and
14 the U.S. Trustee. Ms. Cornell, I didn't mean to leave you
15 out of that. Okay. I mean, it's clear to me whether it's a
16 standalone or a 363 sale, any ongoing enterprise is going to
17 have to satisfy regulatory requirements. And I think that's
18 clear to everybody in this room. You know, one additional
19 regulation of congress, if they settle on any, is going to
20 adopt. I mean, there's going to be something. I mean,
21 there's just -- the market's in complete turmoil.

22 So it's going to be difficult. I don't
23 underestimate that. I am fully committed to see this case
24 move forward as quickly as it possibly can. The costs are
25 enormous. I haven't had fee applications yet, but they are

1 going to be extremely substantial. But I don't see the
2 alternative to it. The number of objections that have been
3 raised, serious objections by pro se Creditors, which I
4 think I commend the Debtors have responded to. Pro se
5 Creditors may not always appreciate the response they get,
6 but they've responded to.

7 I've been reading these pro se objections and
8 comments that have come up all along the way. And I -- you
9 know, I'm very moved by the problems that the collapse of
10 Celsius has presented in the marketplace to pro se
11 Creditors, Creditors represented large and small. So I
12 agree with the Debtors that extending the exclusivity
13 periods will benefit the Debtor's estates, their Creditors
14 and all other key parties in interest, especially when, as
15 here, all stakeholders are working toward a consensual
16 volume-maximizing restructuring.

17 Being required to dual-track negotiations across
18 multiple plans could give rise to destructive uncertainty
19 if, you know, exclusivity were ended. It would give rise to
20 destructive uncertainty to the detriment of all
21 stakeholders. I could cause substantial disruptions to the
22 regulatory approval process. Though it's possible that
23 additional extensions of the exclusivity period could
24 prejudice Creditors if there is not substantial progress
25 made at this juncture, the Creditors will benefit from the

1 Debtors being able to continue negotiations regarding
2 restructuring transactions.

3 Again, the objectors' frustrations, they're
4 reasonable given the amount of professional fees being
5 expended on this case. But at this juncture of the case,
6 the Debtors need more time to hammer out the details of a
7 plan or a potential sale. With the new dates that have been
8 negotiated with the committee and largely accepted I'm told
9 today by many of the different constituencies, I think this
10 is clearly a motion that should and is being granted.

11 You know, today we had ownership of
12 (Indiscernible). Later this week we have custody and
13 withhold. The Debtors have identified other issues, such as
14 whether customers have claims against old Debtors and other
15 issues. I'm moving as fast as I can to resolve these
16 matters. It's a crushing load on my chambers. This is not
17 the only case on my docket, but I'm committed to moving this
18 case forward.

19 The Debtors are still paying all their bills as
20 they come due. They pay vendors in the ordinary course of
21 business or otherwise provided for by orders of the Court.
22 All that weighs in favor of granting the motion. There is
23 no evidence that I'm -- that I've seen that the Debtors are
24 seeking to extend exclusivity to pressure Creditors. To the
25 contrary, I think the Debtors realize that the only path to

1 success in this case is large Creditor support. The case is
2 really less than four months old. You know, it comes --
3 this request for extension of exclusivity comes less than
4 four months after the petition date.

5 Given the complexity of the case, the number of
6 stakeholders, the crucial issues that have to get resolved,
7 whatever the plan is going forward, all of these favor the
8 extension of exclusivity. So the motion is granted on the
9 terms that were described earlier on the record.

10 MR. NASH: Thank you, Judge.

11 THE COURT: Okay. Let's move on (indiscernible).
12 The uncontested matter of the fee examiners, the notice of
13 presentment of opposed amended interim compensation and fee
14 examiner orders filed as ECF Docket 1445. The objection
15 deadline was December 4th at 2 p.m. No responses were
16 received. That motion is granted.

17 All right. Let's go forward with the arguments in
18 -- on the motion to dismiss in Celsius Network v. Stone.
19 It's Adversary Proceeding Number 22-01139. The Debtor's
20 motion to dismiss is ECF -- in that case is ECF 17. There
21 had been a reply to the -- an opposition to the motion and a
22 reply that had been filed.

23 MR. HURLEY: Good afternoon, Your Honor. Mitch
24 Hurley on behalf of the Debtors. I'm sorry. Actually, I
25 didn't catch are we -- are you ready to hear the motion to

1 dismiss? Did I (indiscernible)?

2 THE COURT: I am.

3 MR. HURLEY: So Your Honor, there are two
4 adversary --

5 THE COURT: Let me get the appearance -- hold on,
6 Mr. Hurley. Let me get the appearance for Stone and KeyFi.

7 MR. ROCHE: Good morning, Your Honor. Kyle Roche
8 on behalf of KeyFi and Jason Stone.

9 THE COURT: Thanks very much, Mr. Roche.

10 All right, Mr. Hurley. Go ahead.

11 MR. HURLEY: Your Honor, I was going to make a
12 suggestion actually, which is that there are two adversary
13 matters on today. One of them is Prime Trust and it
14 involves a settlement.

15 THE COURT: Okay.

16 MR. HURLEY: I suspect --

17 THE COURT: We can do that first.

18 MR. HURLEY: Yeah, I suspect it will go much more
19 quickly.

20 THE COURT: Okay. All right. I agree, Mr.
21 Hurley. And that is -- it's the seventh item on the agenda
22 for this afternoon. Celsius Network Limited, et al v. Prime
23 Trust, LLC. It's adversary proceeding Number 22-01140, the
24 motion to approve the settlement with Prime Trust, LLC
25 pursuant to Rule 9019 in the Federal Rules of Bankruptcy

1 Procedure. It's filed as ECF Docket Number 13 in that
2 adversary proceeding. No responses have been received. Go
3 ahead, Mr. Hurley.

4 MR. HURLEY: Thank you, Your Honor. Again, Mitch
5 Hurley with Akin Gump Strauss Hauer and Feld, special
6 litigation counsel for Celsius. So we're here today, Your
7 Honor, on the motion to approve Celsius' settlement with
8 Prime Trust, LLC, which is embodied in the stipulation and
9 order that was filed on November 13th.

10 THE COURT: Let me just stop you for a second. Is
11 an appearance being made this afternoon for Prime Trust?

12 MR. STEEL: Good afternoon, Your Honor. Howard
13 Steel of Goodwin Proctor on behalf of Prime Trust.

14 THE COURT: Thanks, Mr. Steel. Okay.
15 I'm sorry. Go ahead, Mr. Hurley.

16 MR. HURLEY: Thank you. So the stipulation --
17 sorry, the settlement is embodied in stipulation and order
18 that was filed with the court on November 14, 2022 with a
19 revised version filed on November 30, 2022.

20 The stipulation represents a significant
21 achievement in the cases, Your Honor. It provides Celsius
22 with virtually all of the relief that was sought in the
23 complaint, including the return of coins that are worth
24 approximately \$15.2 million at recent prices.

25 The deadline to object to the motion for most

1 parties was November 28th. And as our review of the docket
2 this morning indicates, we're not aware of any objections
3 being filed.

4 At the UCC's request, we extended their objection
5 deadline twice to November 30th, so that we and Prime Trust
6 could exhibit the proposed changes to the stipulation. We
7 did make modifications based on the UCC's requests. And we
8 filed a modified stipulation and those changes are reflected
9 in the version that was filed on November 30th.

10 The UCC also asked us --

11 THE COURT: Let me ask you this (indiscernible).
12 Just briefly outline what the agreement provides for, just
13 the material terms of the agreement. Let's get them on the
14 record.

15 MR. HURLEY: Certainly, Your Honor. So, by the
16 stipulation, Prime Trust agrees to transfer to Celsius all
17 property in Prime Trust's possession, custody or control
18 that was transferred to Prime Trust at any time by any
19 Celsius user's. That's Paragraph 8 of the stipulation.

20 The stipulation provides that within five business
21 days of entry of an order by the Court approving the terms
22 of the stipulation, Prime Trust will transfer that subject
23 property to Celsius designated wallets, for which only
24 Celsius holds the private keys.

25 The Celsius designated wallets set up to receive

1 the Prime Trust transfer were established in accordance with
2 the joint stipulation and agreed order between the Debtors
3 and the Committee with respect to cryptocurrency security.
4 That's ECF Number 813 -- and will be stored by the Debtors
5 in a frozen workspace at Fireblocks Inc. and subject to the
6 same security and transfer standards set forth in the
7 cryptocurrency security stipulation with the UCC.

8 Upon Celsius' written confirmation of receipt of
9 the transfer, the stipulation provides that Celsius and
10 Prime Trust will mutually release each other for all past or
11 present claims related to the subject property, as qualified
12 in the stipulation.

13 Prime Trust will be exculpated from claims arising
14 from its compliance with the stipulation as to users who
15 received notice of the 9019 motion and did not object. And
16 the users' custody account agreements with Prime Trust
17 related to the subject property will be terminated as to
18 users who received notice of the 9019 motion and did not
19 object. This does not affect and is without prejudice to
20 the users' rights under any agreements in which the user is
21 a party with Celsius, and those agreements remain in full
22 force and effect.

23 Within five business days of the transfer by Prime
24 Trust, Celsius will then voluntarily dismiss with prejudice
25 all the claims asserted in the adversary proceeding.

1 Because there is no way to rule out the
2 possibility that a user could transfer property to Prime
3 Trust in the future, and this is because, I think, as Your
4 Honor probably is aware by now, in the crypto blockchain
5 world, once there is an address that's been established, you
6 can't really stop transfers from being made to it, so we
7 have to accommodate the possibility that user's may continue
8 to transfer assets to Prime Trust, though it maybe wouldn't
9 be particularly sensible to do so.

10 So, under the stipulation, starting on March 31,
11 2023 and until the effective date of a plan, Prime Trust
12 will provide Celsius with quarterly reporting of any
13 property that may be deposited by Celsius users after the
14 initial transfer. And at Celsius' request, Prime Trust will
15 transfer any such future deposits to the Celsius designated
16 wallets, with Celsius paying the reasonable and necessary
17 network fees for any future transfers.

18 The stipulation provides further that tracking and
19 reporting related to any property that may be deposited with
20 Prime Trust by users after the effective date will be
21 determined by further agreement of the parties or by order
22 of the Court.

23 The stipulation makes clear that upon receipt of
24 the subject property, Celsius will not use, access,
25 transfer, pledge or distribute the subject property, except

1 pursuant to further order of the Court.

2 The stipulation confirms the Prime Trust transfer
3 of the subject property to the Celsius designated wallets is
4 without prejudice to the right of any party, including any
5 user, to assert any interest, including an ownership or
6 other interest in any of the subject property, and that the
7 transfer does not constitute an admission or acknowledgment
8 by the parties in the stipulation that the subject property
9 is or is not property of the estate.

10 That summarizes the main terms of the stipulation.
11 If you would like, I could summarize the notice that we gave
12 of the stipulation briefly, Your Honor?

13 THE COURT: No. I've reviewed that and
14 unsatisfied that's been done. I just wanted to make sure on
15 the record there was a discussion of what the terms of the
16 settlement were.

17 MR. HURLEY: Okay.

18 THE COURT: Let me ask Mr. Steel whether you have
19 any comments that you want to make.

20 MR. STEEL: Howard Steel, Goodwin, on behalf of
21 Prime Trust. Nothing further, Your Honor, if you're
22 satisfied with the notice.

23 THE COURT: I am. Okay. So, Mr. Hurley, I'm
24 prepared to go ahead and rule at this point.

25 So, before me is this 9019 motion, ECF Docket

1 Number 13, in Celsius v. Prime Trust adversary proceeding.
2 The Court concludes that notice of the proposed settlement
3 was proper and no objections to the settlement have been
4 received.

5 In all such instances, the Court evaluates the
6 merits of the settlement, essentially applying the seven
7 nonexclusive factors set forth by the Second Circuit in In
8 re Iridium Operating Systems. Since no objection to the
9 settlement has been filed, I will not go through each of the
10 Iridium factors, other than to say that the Court has
11 considered each factor to the extent applicable in the
12 circumstances.

13 The Court is satisfied that the settlement is
14 fair, reasonable and in the best interests of the Debtors'
15 estate. Absent the settlement, it could have resulted in
16 expensive and protracted, prolonged litigation.

17 I think this outcome is clearly appropriate, and
18 I'm very appreciative of the efforts of Celsius and of Prime
19 Trust and their counsel in reaching this settlement. So
20 this settlement is approved --

21 MR. HURLEY: Thank you, Your Honor.

22 THE COURT: -- with the changes that were added in
23 the discussions between the Committee and the Debtors as
24 well. Thank you very much, Mr. Steel. Mr. Hurley?

25 MR. HURLEY: So I think that brings us to the

1 complaint against Stone, and that's actually a motion to
2 dismiss by the Defendants. So that's --

3 THE COURT: Yes.

4 MR. HURLEY: -- Mr. Roche.

5 THE COURT: Okay. Mr. Roche?

6 MR. ROCHE: Good afternoon.

7 THE COURT: So, just for the record, this is
8 Celsius Network Limited v. Stone, Adversary Proceeding 22-
9 01139. All right. Go ahead, Mr. Stone.

10 MR. ROCHE: Accepting all facts in the first
11 amended complaint is true, this Court should dismiss
12 Plaintiffs' claims for turnover, conversion, fraudulent
13 misrepresentation, unjust enrichment, replevin and
14 accounting.

15 Parties in this action negotiated over many
16 months, multiple agreements that would govern their business
17 relationships, the deployment of coins under those
18 agreements, and the compensation between the parties for
19 those services. Because of this --

20 THE COURT: Am I correct, Mr. Stone, that you have
21 not moved to dismiss Count 4, the breach of fiduciary claim?

22 MR. ROCHE: It's Mr. Roche, Your Honor, on behalf
23 of Mr. Stone.

24 THE COURT: I'm sorry. I'm sorry, Mr. Roche. I'm
25 sorry. Apologize for that.

1 MR. ROCHE: Not a problem. We are not moving to
2 dismiss at this time the Count 4. Just --

3 THE COURT: Okay. Go ahead.

4 MR. ROCHE: Because of this negotiation, the case
5 at bottom is a contract dispute concerning the asset
6 purchase agreement, the APA, as referred to in the briefing,
7 and the services agreement that are incorporated by
8 reference --

9 THE COURT: Mr. Roche, let me stop you there. The
10 standard that I have to apply in deciding whether to grant a
11 motion to dismiss -- we'll put aside any fraud claim that
12 Rule 9 comes into play -- is whether the complaint -- the
13 well-pleaded facts of the complaint have stated causes of
14 action.

15 I understand the narrative that your motion to
16 dismiss pursues, where this is all a breach of contract,
17 this is all a contract dispute. But the issue before me --
18 and it may be that in a defense of the action, you will be
19 able to persuade the Court that somehow contract claims --
20 that's what this is all about. But the issue for today is
21 whether the well-pleaded facts of the complaint has stated
22 causes of action for turnover under 542, conversion,
23 fraudulent misrepresentation, unjust enrichment, replevin
24 and accounting.

25 There's seven causes of action in the complaint.

1 The only one that you have not moved on is the breach of
2 fiduciary duty claim. Some of the counts are against both
3 Defendants. The turnover, conversion, fraudulent conveyance
4 are against both Defendants. The breach of fiduciary duty
5 is against Stone only. The unjust enrichment is against
6 capstone only. The replevin is against both Defendants.
7 And the accounting is against Stone only.

8 So, what you need to focus your argument before me
9 today -- and I've read all these papers -- is why this
10 complaint, on its face, does not -- the well-pleaded
11 allegations of the complaint do not allege the causes of
12 action set forth.

13 MR. ROCHE: Yes, Your Honor. And I believe it's
14 appropriate -- taking the complaint on its face, the asset -
15 - the APA and the services agreement still, by reference,
16 are incorporated in the complaint in Paragraph -- just
17 pulling up -- Paragraph 21 of the first amended complaint
18 states, "Pursuant to the asset purchase agreement and the
19 services agreement, Defendant Stone was to continue
20 deploying Celsius' coins as CEO of Celsius KeyFi to the
21 extent authorized in advance by Celsius." And many of the
22 issues raised in the first amended complaint go to the
23 question of authorization under that agreement, the asset
24 purchase agreement.

25 So, when considering the legal sufficiency of the

1 claims -- and I'll go through them one by one and why they
2 should be dismissed -- when considering the asset purchase
3 agreement, I do believe it's appropriate for the Court to
4 consider the APA.

5 And starting with the asset purchase agreement --
6 excuse me -- starting with the turnover claim, Plaintiffs
7 cannot plead around the existence of a bona fide dispute
8 over ownership of the property by simply asserting that the
9 Defendants' claims to that property are frivolous. I
10 believe In re VeraSun Energy Corp. is instructive there.

11 In that case, the court was confronting a turnover
12 claim in accounts receivable, and like this matter, the
13 plaintiffs were asserting that just because an accounts
14 receivable claim is subject to litigation, doesn't make it a
15 bona fide dispute. But the Court disagreed there, finding
16 that the denial of the existence of an agreement and the
17 existence of a dispute over the outstanding balance was
18 enough to dismiss the turnover claim because there was a
19 bona fide dispute.

20 And here, the APA was entered into by all the
21 parties to this litigation. And accepting all the facts in
22 the first amended complaint as true, Stone and KeyFi first
23 asserted breach of contract claims against Celsius by at
24 least September 1, 2021. That's Paragraph 41 in the first
25 amended claim.

1 Paragraph 42 in the first amended complaint shows
2 that the parties engaged in settlement discussions for at
3 least 10 months. And Paragraph 43 shows that KeyFi brought
4 suit against Celsius after those discussions broke down,
5 seeking additional damages.

6 And so we're not asking for the Court to consider
7 the KeyFi complaint. But as Celsius in Footnote, I believe,
8 2 asks this Court to consider -- and we're fine for that
9 standard -- the mere filing of -- to take judicial notice of
10 the filing of the complaint as it relates to the existence
11 of whether or not there is a bona fide dispute and whether a
12 turnover claim has been properly pleaded.

13 And Celsius' only response to the question of
14 whether or not there is a bona fide dispute, for purposes of
15 determining the legal sufficiency of the turnover claim is -
16 - they assert that, "It is their strongly held view that the
17 claims and allegations contained in the KeyFi complaint are
18 entirely false and indeed frivolous." The Court does not
19 need to accept that --

20 THE COURT: But the KeyFi -- excuse me, Mr. Roche.
21 The fact that KeyFi filed a State Court complaint does not
22 mean that this complaint in this case does not include well-
23 pleaded allegations of each of the causes of action. The
24 fact that KeyFi and Stone, for whatever its reasons, decided
25 to be the aggressor and promote its narrative in a State

1 Court complaint doesn't mean that the face of this complaint
2 does not set forth well-pleaded facts to support each of the
3 claims that are included.

4 MR. ROCHE: I agree.

5 THE COURT: You can't just simply say we sued them
6 first; we said they owe us a bundle of money. That is not a
7 defense to this action.

8 MR. ROCHE: No. And I completely agree with
9 respect to all the other claims except the turnover claim.
10 Under 542(a) and (b), if there is a bona fide dispute, a
11 turnover -- a claim and turnover claim, a garden variety
12 claim for contract can't be turned into a turnover claim, if
13 there is a bona fide dispute. And --

14 THE COURT: So, at bottom, Plaintiffs' argument is
15 that the original coins never stopped being Debtor's
16 property. Debtor held title in any property that was
17 obtained with the Debtor's coins. Defendants' argument is
18 that following the events that you described, at some point
19 in time both forms of property, coins and property obtained,
20 the property became Defendants' property. Or at a minimum
21 there is a dispute to their title dooming the turnover
22 claim. And there are a host of problems with that argument,
23 Mr. Roche. I'm not going to go through each of them now,
24 but I think you're off-base.

25 MR. ROCHE: Well, so, Your Honor, I think the only

1 question the Court needs to determine for resolving the
2 motion is whether or not the first amended complaint, on its
3 face, shows that there is a bona fide dispute to that. I
4 think the questions are -- the question is different for the
5 conversion claim and the other causes of action. But I
6 think for at least -- and I would ask -- I believe In Vera
7 Energy Corp. is instructive there because --

8 THE COURT: Mr. Roche, you cite LaMonica v. CEVA
9 Group PLC, 582 B.R. 46 (Bankr. S.D.N.Y. 2018). The court in
10 that case refused to review documentary evidence outside the
11 pleadings at the motion to dismiss stage to determine
12 whether there was a bona fide dispute, including a Section
13 542 claim. You rely on that case. It cuts right against
14 you.

15 MR. ROCHE: So, in CEVA, the documents that were
16 being asked to be relied upon, it wasn't a previous dispute.
17 So our distinction under CEVA is that where there is a pre-
18 existing -- as a matter of law, where there is a pre-
19 existing dispute, as a matter of law a turnover claim cannot
20 stand to that same property, because the existence of the
21 previous dispute is evidence of the existence of a bona fide
22 dispute.

23 THE COURT: Mr. Roche, in your opposition, you
24 seem to agree that these coins belong to the Debtor and
25 you're willing to work out a stipulation to return them.

1 MR. ROCHE: You're saying the opposition for the
2 preliminary injunction?

3 THE COURT: Yeah. Yes, you did.

4 MR. ROCHE: Not -- Your Honor, I believe that's
5 not accurate. The tokens at issue do not belong to the
6 Debtor. The tokens at issue belong --

7 THE COURT: All right. Let's --

8 MR. ROCHE: (indiscernible)

9 THE COURT: Let's go on. Go on to the other
10 causes of action.

11 MR. ROCHE: Sure. Turning to the conversion
12 claim, again, accepting their allegations as true, they've
13 alleged, one, an inappropriate use of assets. They gave to
14 the Defendant -- that they gave to Defendant. It was
15 Celsius' conversion claim, at bottom. And this is Paragraph
16 -- turning to their conversion claim -- Paragraph 52 of
17 their -- of the first amended complaint alleges that at
18 bottom, Celsius gave coins to the Defendants in this
19 litigation. And the Defendants inappropriately used those
20 assets and failed to return those assets.

21 But again, the asset purchase agreement governs
22 this conduct. Schedule 7.8 of the asset purchase agreement
23 -- and if Your Honor has the asset purchase agreement in
24 front of them -- in front of it -- I would direct it to what
25 is Page -- it's Page 29 of the PDF and Schedule 7.8. It

1 defines what the authorized activities are.

2 And so, Citadel Management here, again is directly
3 on point. There, there was a contracted issue where a
4 plaintiff gave to the defendant \$11 million worth of assets.
5 And in return, the defendant was to make periodic interest
6 payments, assign ownership of particular properties, and
7 then give back the principal at the end of the contract at
8 issue. But the defendant didn't do that. The defendant
9 just instead took the \$11 million and failed to perform the
10 other obligations under the agreement.

11 And that's what we have here. We have a contract.
12 They've alleged that they gave Stone these assets, they gave
13 KeyFi and Stone these assets, and that Stone and KeyFi
14 failed to return some of these assets. But that's conduct
15 that would be barred by the existence of the asset purchase
16 agreement. It's not separate and independent. Celsius has
17 not alleged any acts. And if you look at their opposition
18 brief, they don't point to any conduct separate and part
19 that would not be a garden variety breach of contract claim.
20 And they can't point to any conduct outside of the asset
21 purchase agreement that would give rise to a cause of
22 action. So, for those reasons, they haven't alleged an
23 independent (indiscernible) separate and apart from breach
24 of contract.

25 And moving on to the unjust enrichment, replevin

1 and accounting claims, it's the same issue, Your Honor.
2 There is an asset purchase agreement that under Schedule 7.8
3 shows what KeyFi and Stone were supposed to be doing with
4 these assets. It defines the centralized -- authorized and
5 central finance activities, defines how they're supposed to
6 be accounted for the net profits, and defines the scope of
7 what the parties were to be doing with the tokens, how the
8 tokens would be returned to Celsius, for the duration of the
9 performance of the activities that Mr. Stone and KeyFi were
10 doing on behalf of Celsius and Celsius KeyFi.

11 And so the unjust enrichment, replevin and
12 accounting claims fail for the same reason that the
13 conversion claims do.

14 So, first, on the unjust enrichment claim, in
15 order to plead the claim in the alternative, and plead
16 unjust enrichment alternative to a breach of contract claim,
17 there must be either a bona fide dispute concerning the
18 distance of the contract. We don't have that here. Celsius
19 admits that there's an asset purchase agreement and they
20 admit in Paragraph 21 that pursuant to the asset purchase
21 agreement, Stone and KeyFi were deploying coins on their
22 behalf.

23 For the second way around a breach of -- to bring
24 an unjust enrichment claim in the alternative is where the
25 contract doesn't cover the dispute. And so that's the

1 question of law before this Court, is does the contract
2 govern the dispute that Celsius has alleged in its first
3 amended complaint? And it plainly does. Section 7.8
4 defines what the Defendants in this case were entitled to do
5 and what Celsius was contracting for them to do with their
6 tokens.

7 So, again, what their unjust enrichment claim
8 alleges is, one, that they used Celsius property and its
9 proceeds to "acquire NFTs without authorization, transferred
10 such NFTs and other Celsius property away from Celsius, and
11 used that property and its proceeds to develop what Stone
12 refers to as an investment company."

13 But this just goes back to the Citadel case, where
14 parties had an agreement at issue. And we're not arguing
15 that that -- I'm not arguing against the facts that they
16 have alleged. They have alleged that Stone misappropriated
17 assets. They've alleged KeyFi misappropriated assets. They
18 allege that he transferred assets without authorization.
19 But that's all governed by Schedule 7.8 of the asset
20 purchase agreement, which all the parties in this case are
21 signatories to.

22 And so that, for purposes of the legal sufficiency
23 of their unjust enrichment, replevin and accounting and
24 conversion claims, means that those claims, as a matter of
25 law, are deficient, and that this case would -- at least

1 with respect to those claims, Your Honor, should be brought
2 as breach of contract claims, pursuant to the independent
3 Court document.

4 THE COURT: All right. Anything else you want to
5 add?

6 MR. ROCHE: Just lastly, on the fraudulent
7 misrepresentation claim, they assert primarily three -- in
8 their opposition, they set out the three statements that
9 they're relying on for their fraudulent misrepresentation
10 claim.

11 So, first, in August 2020, they claim Stone and
12 KeyFi assured Celsius that he was hedging -- that Stone and
13 KeyFi were going to hedge the price movements in the crypto
14 assets that they were using to deploy -- using -- that they
15 were investing.

16 The second statement -- and this is -- I'll pull
17 it up in their opposition brief -- I'm looking at Page 19-20
18 of their opposition brief. They outline hedging,
19 profitability and visibility and return of coin.

20 And so, at bottom, there's three statements
21 essentially. Stone KeyFi told Celsius they were hedging.
22 Stone KeyFi told --

23 THE COURT: So, Mr. Roche? Mr. Roche, in --

24 MR. ROCHE: Yes.

25 THE COURT: -- in the Plaintiffs' opposition to

1 your motion, you say -- first off, you say that they haven't
2 made specific -- they haven't alleged specific
3 misrepresentations and -- finding my notes -- at Pages 19
4 and 20 of the opposition, the Plaintiff points to specific
5 dates and quotes and provides details -- detailed
6 information, time periods to apprise Defendant of the
7 general time period of any misrepresent -- of the 9(b)
8 requirements.

9 So, their opposition specifically -- you say they
10 didn't, and they point out those very -- the specifics --

11 MR. ROCHE: I --

12 THE COURT: -- at Pages 19 and 20 of their --

13 MR. ROCHE: I apologize.

14 THE COURT: -- opposition.

15 MR. ROCHE: I said they did. I was quoting
16 exactly -- they point to three statements and I wanted to
17 walk Your Honor through why each of those statements does
18 not -- cannot stand -- doesn't satisfy the elements of
19 fraudulent misrepresentation. First --

20 THE COURT: Go ahead.

21 MR. ROCHE: -- with respect to each of those three
22 statements, they do not allege in the first amended
23 complaint that Stone or KeyFi knew those statements were
24 false when they were made. And then, so that's for -- with
25 respect to each of those statements.

1 The second -- so then with respect to the first
2 and second statement on Page 19-20 of their opposition
3 brief, those are the statements concerning hedging and the
4 profitability of the investments. Those cannot serve as
5 misrepresentations because the conduct complained of would
6 be governed by the scope of authorized services under the
7 asset purchase agreement. Again, Schedule 7.8. Under New
8 York Law, the reasonable reliance element of fraud is
9 precluded when an express provision in a written contract
10 contradicts a prior alleged representation in a meaningful
11 fashion.

12 Here, what they claim is that Stone said, I'm
13 going to be hedging certain transactions and that the
14 investments are profitable. But the contract at issue here,
15 the asset purchase agreement, outlines what Stone and what
16 KeyFi were to be doing with the coins at issue.

17 And so we're again, under New York law, where
18 there's a contract that governs -- or contradicts a prior
19 misrepresentation in a material fashion. And Your Honor,
20 the statements on Page 19 of the opposition to the motion to
21 dismiss, those both predate the asset purchase agreement.
22 The asset purchase agreement was executed at the beginning
23 of January of 2021. Those two statements occurred in August
24 and towards the end of 2020 and are directly refuted by the
25 language governing Stone and KeyFi's responsibilities under

1 the asset purchase agreement and Section 7.8.

2 And then their last statement is essentially Stone
3 misrepresented the timing of when he was going to return the
4 coins and misrepresented that he was going to return all of
5 the coins. And their alleged harm there is that Celsius was
6 prejudiced by that misrepresentation -- that's assume it's a
7 misrepresentation, because Celsius did not -- wasn't able to
8 timely file an action.

9 Well, again, under the weight of their own first
10 amended complaint, they knew of the alleged
11 misrepresentation by at least May of 2021. And they knew
12 that Stone was asserting claims against them by September
13 2021. Yet they didn't file this action until August of
14 2022.

15 So, any claim that they suffered harm from relying
16 on that statement, the statement that he was going to return
17 coins, and that they delayed pursuing litigation on reliance
18 of that statement is not plausible.

19 Unless Your Honor has any further questions at
20 this time, Defendants have nothing further.

21 THE COURT: Okay. Mr. Hurley?

22 MR. HURLEY: Thank you, Your Honor. Again, for
23 the record, Mitch Hurley, with Akin Gump Strauss Hauer &
24 Feld. Your Honor, Celsius brings this action to recover
25 property that the Defendants stole. And the way the

1 Defendants stole that property was by entering digital
2 wallets that belonged to Celsius, transferring coins and
3 other digital assets that belonged to Celsius to their own
4 wallets, and laundering the proceeds of those transfers
5 through a money laundering application called Tornado Cash.
6 The stolen property is worth millions of dollars and Celsius
7 seeks to recover it for the benefit of its creditors.

8 As you noted, the Defendants seek -- make a motion
9 to dismiss all the claims except for breach of fiduciary
10 duty. There are at least two fundamental and fatal problems
11 with the approach that the Defendants take. Your Honor has
12 hit, I think, on both of them. But let me reemphasize.

13 First, this is a motion to dismiss under Rule
14 12(b)(6). It is not a summary judgment motion. It's a pre-
15 discovery motion, and I want to emphasize that. There has
16 not been a scrap of paper produced by the Defendants in this
17 case. We sought discovery. We served discovery on
18 September 28th. Their responses were due on October 28th.
19 They promise they were going to start the rolling production
20 on November 28th. We still don't have a page.

21 It's not to bring a premature discovery dispute
22 before Your Honor, Your Honor, just to emphasize that this
23 is the very beginning of the case. It's a 12(b)(6) motion,
24 not a summary judgment motion.

25 On a 12(b)(6) motion, of course Your Honor has to

1 take us through the facts that are pleaded in Celsius'
2 complaint and confine the analysis to the facts that are
3 stated in the complaint and documents appended or integral
4 to the complaint.

5 In their motion, the Defendants really do ask you
6 to do the exact opposite. They ask you to set aside
7 Celsius' well-pleaded allegations and accept theirs instead.
8 Of course, you can't do that under a 12(b)(6) standard.

9 The second really fatal flaw of their approach,
10 Your Honor, is their really desperate attempt to try to turn
11 this into a breach of contract action. This is not a breach
12 of contract action, Your Honor. The complaint alleges an
13 extraordinary pattern of theft, money laundering and other
14 misconduct that I will detail in a moment, and amply
15 supports the tort and equitable claims that Celsius brings.

16 Unlike virtually all of the cases the Defendants
17 cite, in this case, Celsius doesn't allege breach of
18 contract. Let's talk about why for a second. So, first,
19 heard Mr. Roche refer to the asset purchase agreement, and
20 he actually -- he just said all the parties here are a party
21 to the asset purchase agreement. First of all, that's not
22 true. Defendant Stone is not a party to the asset purchase
23 agreement.

24 But more importantly, the terms that Mr. Roche
25 keeps referring to are in a schedule that is referred to the

1 summary of key terms that was attached to the asset purchase
2 agreement, and that is a schedule of terms that the parties
3 contemplated would be included in a subsequent agreement
4 called the services agreement. In fact, the services
5 agreement was entered into and it embodies some of those
6 terms, but not all, and it's an integration.

7 Neither Defendant is a party to the services
8 agreement. So, in other words, neither Defendant is a party
9 to the agreement that contains the terms that you just heard
10 Mr. Roche rely on.

11 Celsius in this case doesn't allege breach of
12 contract, partly for the obvious reason that neither
13 Defendant is a party to that contract. Celsius identifies
14 the services agreement and some other contracts, but it does
15 not rely on them in alleging its claims.

16 But even if the services agreement could be
17 considered on the motion, Your Honor, it wouldn't change
18 anything, because all of the Defendant's' arguments,
19 including the ones that supposedly are based on the
20 contracts, depend on material that is found nowhere in the
21 complaint and nowhere in any contract or any other document
22 that's identified in the complaint. And again, that means
23 that a Rule 12(b)(6) motion -- there motion has to be
24 denied.

25 Okay. So, since this is a Rule 12(b)(6) motion, I

1 thought it would make sense to briefly highlight some of the
2 key allegations that actually are alleged in the complaint,
3 Your Honor. And with the Court's permission, I'd like to
4 put up a demonstrative with a timeline of certain of those
5 allegations. May I do that?

6 THE COURT: Yes, go ahead.

7 MR. HURLEY: Okay. Mr. Chapman, I think, is on
8 still, and I think we need to give him access to be able to
9 share his screen.

10 CLERK: Okay. Mr. Chapman is a co-host.

11 MR. CHAPMAN: Thank you.

12 MR. HURLEY: Perfect. There he is. He looks like
13 a deer in the headlights, but it's... All right. So, it's
14 been a long day, Your Honor, and you've read the papers, but
15 I do think it's important to highlight some of these
16 allegations. So, Celsius alleges in its complaint that in
17 August 2020, Celsius engaged Defendants to conduct staking
18 and DeFi activities with Celsius coins. That's Paragraph
19 18.

20 In or around the same time, Celsius alleges in
21 Paragraph 20, began transferring Celsius coins to a Celsius
22 wallet and provided the Defendants with a private key for
23 that wallet. Private key to a wallet is like a passcode for
24 an ordinary account, except that it can't be changed. Stone
25 was given the private key, solely so he could deploy coins

1 in in authorized staking and DeFi activities. That's
2 Paragraph 20.

3 Celsius alleges that in early 2021, it instructed
4 Defendant to return all of Celsius' property. That's
5 Paragraph 24. Celsius alleges that Defendants actually
6 agreed that they would return all of Celsius' property.
7 However, Celsius alleges, Defendants actually secretly
8 embarked on a series of transactions and transfers without
9 Celsius' knowledge or authorization.

10 Among other things, Celsius alleges on February 1,
11 2022, Defendants used 600 Celsius ETH to buy NFTs called
12 CryptoPunks. Celsius alleges he was never authorized to buy
13 NFTs. At that time, Your Honor, 600 ETH was worth about
14 \$800,000.

15 On February 19th and 27th, Celsius alleges the
16 Defendants transferred a total of 450 Celsius ETH directly
17 from Celsius wallets to their own wallets. The stolen ETH
18 at that time, Your Honor, was worth about a million dollars.

19 On March 6th, the Defendants, Celsius alleges,
20 began to transfer the NFTs they had bought with Celsius
21 coins without authorization from Celsius' wallet to
22 Defendants' wallet.

23 On March 9th, Stone claims that he resigned his
24 position as CEO of Celsius. But the very next day, Celsius
25 alleges, Defendants transferred 20 more Celsius ETH, about

1 \$40,000.

2 On March 16th, Defendants transferred more NFTs
3 that they purchased with Celsius coins from Celsius wallets
4 to Defendants' wallets. That's Paragraph 35. And in the
5 most probably extraordinary bit of misconduct that's alleged
6 here, Your Honor, on September 21, 2021, six months after
7 Defendant says he resigned from Celsius, Defendants used
8 their access to Celsius private keys to steal 1.4 million
9 stablecoins called DAI. DAI, Your Honor, is a coin that's
10 pegged to the dollar. So one stablecoin is one dollar. So
11 that's \$1.4 million dollars.

12 At that time, Celsius knew that Defendants had the
13 private keys for the Celsius wallet, but believed that
14 wallet contained nothing of value. And in fact, at the time
15 it didn't. But in September, a smart contract that was
16 related to a deployment the Defendants made before departing
17 Celsius deposited automatically the 1.4 million DAI in the
18 Celsius wallet, with no notice to Celsius. But the
19 Defendants were waiting, apparently.

20 Celsius alleges that on September 21, 2021, the
21 Defendants accessed Celsius' wallet, transferred that 1.4
22 million DAI to their own wallets, and then converted that
23 DAI into ETH. And on 17 transactions, you can see on the
24 blockchain over the next couple of months, laundered that
25 \$1.4 million through Tornado Cash. That's Tornado Cash as

1 the on-chain mixer that has been banned by OFAC because of
2 it's frequent use to hide the proceeds of cybercrimes.

3 And this is not Defendants' first use of Tornado
4 Cash. Celsius alleges multiple other uses, including in
5 Paragraph 38. Celsius also alleges that in addition to the
6 thefts I just identified, Defendants never returned a large
7 number of other coins and property that were made available
8 to them through the wallets. Celsius does not know what
9 happened to those coins, Your Honor.

10 Again, there hasn't been any discovery produced
11 and the Defendants have refused to account for their
12 activities with the Celsius coins. But Celsius alleges in
13 the complaint that those coins also may have just been
14 stolen by the Defendants.

15 So, Your Honor, these are the specific allegations
16 that are actually contained in the complaint and that
17 animate Celsius' claims. They are more than sufficient to
18 sustain each of the tort claims and the equitable claims
19 that are alleged. And for the most part, the Defendants
20 really don't even argue that Celsius has failed to allege
21 the elements of its claims. Instead, what they do is they
22 rely on factual assertions outside of the complaint to argue
23 that despite Celsius having alleged those elements, the
24 claims should be dismissed.

25 Let me start with turnover. So, basic --

1 THE COURT: Mr. Hurley, I'm going to stop you.
2 I've read all the papers.

3 MR. HURLEY: Okay.

4 THE COURT: Let me hear very briefly from Mr.
5 Stone -- Mr. Roche -- excuse me. Mr. Roche, go ahead.

6 MR. ROCHE: Just a few points I want to clarify.
7 So, KeyFi was a party to the agreement, and I believe Mr.
8 Hurley said I misspoke. I did not misspeak. I said all the
9 parties were signatories to the agreement. Mr. Stone signed
10 on behalf of KeyFi the asset purchase agreement.

11 And Your Honor, I think Mr. Hurley -- what I would
12 say is, yes, we agree that absent an agreement and absent
13 the incorporation of agreement into this complaint, they
14 have, for purposes of their first amended complaint, pled
15 the elements of conversion, of turnover, of --

16 THE COURT: Replevin, unjust enrichment. You name
17 it; they've alleged it.

18 MR. ROCHE: Except the existence of the asset
19 purchase agreement is critical. And under New York law,
20 where there is a conflict, a claim for conversion, unjust
21 enrichment, replevin and accounting cannot stand. And where
22 that contract can particularly -- excuse me -- explicitly
23 contemplates that the parties are going to be joining --
24 creating an entity to deploy coins and for Celsius to deploy
25 coins, the proper nature of their claim is one in contract

1 and not in tort.

2 THE COURT: All right. I'm going to stop you
3 there. I'm telling you now that I'm going to be entering an
4 opinion denying the motion to dismiss as to each and every
5 count that you've sought to dismiss. We have a preliminary
6 injunction hearing scheduled for January. That's going to
7 remain on the docket with the schedule that's been agreed.

8 I don't want to hear that you're dragging your
9 feet in providing discovery. Mr. Hurley, if there are
10 discovery issues that you feel are not being sufficiently
11 addressed, I require you meet and confer.

12 And to the extent that you need the assistance
13 from the Court, you contact my Courtroom Deputy, Deanna
14 Anderson, and hearings will be scheduled for that day or the
15 next day, or at the most, two days after. I don't want
16 motions to compel. We take it up and there'll be a Zoom
17 hearing.

18 If I conclude that I need any briefing, I'll
19 require short letter briefs. But discovery is going to move
20 along rapidly. We have a schedule for a preliminary
21 injunction hearing. In due course, a written opinion
22 denying the motion to dismiss will be entered.

23 I did see Mr. Roche's opposition to the
24 preliminary injunction hearing. I wanted to ask each of you
25 -- one of the issues that he raises is to whether or not

1 there was supposed to be an accounting, and I wanted to see
2 whether the two of you have discussed trying to reach an
3 agreement to provide for a prompt accounting that might
4 narrow the issues, if at all. Otherwise, we'll just go
5 forward with the preliminary injunction.

6 But the opposition offered to enter into a
7 stipulation to resolve most of the issues, but not all. But
8 there was much said about whether there had been an
9 agreement for an accounting.

10 So I guess my question for the two of you is, have
11 you discussed whether you're able to reach an agreement for
12 an accounting? Will that obviate the need for the
13 preliminary injunction hearing or shorten it, or come up
14 with a new schedule for it? Otherwise, we'll just go
15 forward on the schedule that exists.

16 And I don't want to -- we're not going to get into
17 a discovery conference now, but I'll tell you right now, Mr.
18 Roche, if there was discovery served, which there was, and
19 an agreement to produce, and you haven't, there'd better be
20 a really good reason for it, because I'm going to insist on
21 all discovery necessary being taken in time for the
22 preliminary injunction hearing.

23 Mr. Hurley, let me ask you first. Have you had
24 any discussions with Mr. Roche about an accounting?

25 MR. HURLEY: Well, not an accounting specifically,

1 Your Honor. But the -- so the relief that we sought on the
2 motion for an injunction originally, obviously, sought the
3 freezing of the property, but in addition, some other
4 relief, including a sworn statement from Mr. Stone
5 identifying certain property that was taken and that was
6 acquired. And that -- in the category of relief that I
7 understand Mr. Roche in his opposition to and saying he no
8 longer opposes.

9 So we provided to Mr. Roche, after reading the
10 opposition, a proposed stipulation and order that would
11 enter all of the relief, other than the relief that he says
12 he doesn't oppose. And we sent that over to him I think on
13 Friday. So we'll see how he responds.

14 But my expectation and hope would be that would
15 result in at least by the time we have the injunction,
16 you'll have a sworn statement that at least identifies all
17 of the property that's at issue in the injunction.

18 MR. ROCHE: Your Honor, so just a couple points of
19 clarification. We have engaged in sufficient discovery.
20 We've been negotiating over search terms. We've collected
21 over 150,000 documents from the Defendants in this case.
22 And so we are planning prompt discovery. Part --

23 THE COURT: When are you going to produce the
24 documents? You say you collected 150,000 documents. What
25 are you going to produce them?

1 MR. ROCHE: We're going to produce them when we
2 agree on search terms. The initial search terms that were
3 sent over included a little bit more than 40,000. The
4 parties are, I believe -- Defendant -- or excuse me --
5 Plaintiffs have asked for Mr. Stone's deposition to go
6 forward ahead of December 23rd and to have some discovery.
7 As part of that deposition, we agreed to produce that as
8 Plaintiffs have asked, five days ahead of that deposition.
9 So that discovery is going to -- will be produced five days
10 ahead of the deposition. And in parallel with that, we will
11 continue reviewing all the other documents, once we get a
12 set of search terms agreed to.

13 On the relief that's being requested, the main
14 relief that we oppose is the entry of a freezing order
15 concerning property -- the property that is at issue, that
16 Defendants assert, and as outlined in the New York Supreme
17 action, was paid as compensation, which Plaintiffs in this
18 action say was stolen. That's a subject for the preliminary
19 injunction hearing.

20 As far as the other issues and accounting, we're
21 happy to engage in accounting. The asset purchase agreement
22 and the services agreement contemplated accounting when
23 there is a dispute over the amount. And in fact, it was the
24 Defendants in this case that initially evoked the audit
25 provision of the asset purchase agreement over a year ago.

1 We're happy to identify the property that -- I
2 think there's going to be some definitional work that needs
3 to be worked out between the parties. Plaintiffs sent a
4 letter over on Friday. My grandmother passed away and so
5 I'm -- had to do some traveling for the funeral and the wake
6 this weekend. But I plan on responding to that either late
7 tonight or early tomorrow to get some form of agreement on
8 how the parties could do an accounting.

9 Your Honor, I would point out, a simple
10 interrogatory could have been issued to identify all of the
11 assets at issue. We would have responded to that. And
12 during the course of the past year and a half, we did
13 identify for the Plaintiffs here --

14 THE COURT: I don't want to hear what happened
15 over the last year and a half. I want a resolution of the
16 discovery issues promptly. I want -- if the two of you and
17 your clients agree to an accounting or an audit, let's get
18 that resolved.

19 Mr. Hurley, have you come up with a set of search
20 terms?

21 MR. HURLEY: So, Mr. Chapman has been handling
22 that --

23 MR. ROCHE: We have, yes. We've run their search
24 terms over the 150,000 documents. It's come down to about
25 40,000. The parties have been going back and forth on

1 search terms, on search terms for both sides, and I expect
2 we'll get an agreement there within the next week, week and
3 a half. And --

4 THE COURT: That's too long. No --

5 MR. ROCHE: Okay.

6 THE COURT: Mr. Roche, that's too long. Who are
7 you negotiating search terms with?

8 MR. ROCHE: The rest of the Akin team.

9 THE COURT: Mr. Hurley, whoever it is on your team
10 who's doing that should meet and confer with Mr. Roche by
11 5:00 next Monday. And this needs to get resolved.

12 MR. HURLEY: We will intend to do that much sooner
13 than that, Your Honor.

14 THE COURT: That -- sooner the better. Okay. We
15 go forward with the preliminary injunction hearing, I don't
16 want to hear from anybody, we didn't get the discovery we
17 wanted. Everything is going to be done. You've got a
18 schedule. You're going to adhere to the schedule. If you
19 can come to some agreement to avoid the necessity of the
20 preliminary injunction, fine. Otherwise, let's just move
21 forward.

22 I wanted to let you know today that I'm denying
23 the motion to dismiss so you both know that you're charging
24 ahead with the preliminary injunction hearing if that's not
25 resolved.

1 MR. ROCHE: Understood, Your Honor. There's
2 potentially one discovery issue that if we could get some of
3 the Court's help on today, if you'd rather --

4 THE COURT: You can't.

5 MR. ROCHE: Okay.

6 THE COURT: You can't get --

7 MR. ROCHE: Understood.

8 THE COURT: You need to meet and confer and see if
9 you can resolve it. And if you can't, the party needing the
10 assistance of the Court contacts my Courtroom Deputy and
11 you'll get a prompt hearing on it. We're not doing this on
12 the fly. Okay?

13 MR. ROCHE: Understood, Your Honor.

14 THE COURT: All right. Anything else for today?

15 MR. ROCHE: Nothing for Defendants.

16 MR. HURLEY: Not for me, Your Honor.

17 THE COURT: Mr. Hurley?

18 MR. HURLEY: Not for me, Your Honor. Thank you.

19 THE COURT: All right. I think that concluded
20 everything on the agenda for this afternoon. There are a
21 number of adjourned matters that are listed on the agenda,
22 but by my reckoning, we've covered everything that had to be
23 dealt with during the agenda. Mr. Nash, is that consistent
24 with your view?

25 MR. NASH: Yes, sir.

1 THE COURT: We are adjourned.

2 MR. NASH: Thank you, sir.

3 (Whereupon these proceedings were concluded at

4 3:12 PM)

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I N D E X

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C E R T I F I C A T I O N

I, Sonya Ledanski Hyde, certified that the foregoing
transcript is a true and accurate record of the proceedings.



Sonya Ledanski Hyde

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Date: December 7, 2022